TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922

No. 270

JOHN BARTON PAYNE, DIRECTOR GENERAL OF RAILROADS, AS AGENT, &c., PLAINTIFF IN ERROR,

vs.

FARMERS CO-OPERATIVE EQUITY COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED FEBRUARY 11, 1922.

(28,704)

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OCTOBER TERM, 1921.

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vs.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

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STATE OF MINNESOTA:

In Supreme Court.

STATE OF MINNESOTA,
County of Hennepin:

Municipal Court, City of Minneapolis.

FARMERS CO-OPERATIVE EQUITY COMPANY, Plaintiff,

vs.

WALKER D. HINES, as Agent Designated by the President under the Transportation Act of 1920, Defendant.

Summons.

The State of Minnesota to the above-named defendant:

You are hereby summoned and required to answer the complaint of the plaintiff in the above entitled action, which complaint is hereto annexed and herewith served upon you and to serve a copy of your answer to the said complaint on the subscriber at his office, 354 Security Building, Minneapolis, Minnesota, County of Hennepin within ten days after service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you in the sum of Thirty and 90/100 ($30.90) Dollars, with interest thereon at the rate of six per cent per annum since the 25th day of August, 1919, together with plaintiff's costs and disbursements herein.

ALEX. KANTER,
Attorney for Plaintiff.

354 Security Building, Minneapolis, Minnesota.

(Title of Cause.)

Complaint.

Plaintiff for his cause of action against this defendant complains and alleges:

I.

That on the 21st day of March, 1918, the Congress of the United States of America passed an act authorizing the President of the United States to take possession and assume control of all systems of transportation and the appurtenances thereof, in the said United States, and that by proclamation dated December 20th, 1917, and

April 11th, 1918, the President of the United States did take possession and assume control of all the systems of transportation and appurtenances thereof including the Atchison, Topeka and Santa Fe Railroad Company. That on the 20th of February, 1920, the Congress of the United States of America passed an act terminating federal control of all systems of transportation and the appurtenances thereof and authorizing the President of the United States to designate an agent against whom suits in equity and actions at law based on causes of actions arising out of possession of and operation by the President of the railroad or systems of transportation of any carrier, might be brought, and that pursuant to the authority vested in him by the Congress of the United States of America, the President of the United States has heretofore, appointed, designated and named John Barton Payne, as the proper agent against whom said actions may be instituted, and that the said John Barton Payne is the proper party to be named as defendant in this action.

II.

That during all times hereinafter mentioned, the Atchison Topeka and Santa Fe Railway Company was a common carrier of freight and passengers engaged in state and interstate commerce and was then and there under the operation and control of the director general of railroads.

III.

That at said station of Isabel, Kansas, on the 25th day of August, 1919, the plaintiff delivered to the Atchison Topeka and Santa Fe Railway as such common carrier, then and there under the operation and control of the director general of railroads, one certain carload of wheat, the property of this plaintiff, consisting of Eighty-five Thousand Two Hundred (85,200) pounds thereof loaded and contained in Atchison Topeka and Santa Fe car 15493 billed and consigned for transportation over the line of the Atchison, Topeka & Santa Fe Railway and succeeding lines to Hutchinson, Kansas, there to be delivered to the order of the plaintiff or the authorized agent of the plaintiff.

IV.

That the Atchison Topeka and Santa Fe Railway then and there to-wit under the authority of the director general of railroads at said Isabel, Kansas, on the 25th day of August, 1919, as such common carrier received and accepted said carload of wheat so billed and consigned for transportation as aforesaid, and for a valuable consideration thereof to be paid, executed, issued and delivered to the plaintiff for the use and benefits of this plaintiff, its certain through bill of lading, shipping receipt or contract providing for the transportation of said carload of wheat over its said line of railroad and connecting lines to Hutchinson, Kansas whereby the director general of

railroads became liable to this plaintiff for any and all losses or damage which might be negligently caused to said plaintiff by the Atchison Topeka and Santa Fe Railway then under the operation and control of the director general of any or all the said connecting lines while the said wheat was in the course of transportation.

V.

That the Atchison, Topeka and Santa Fe Railway under the operation and control of the general director of railroads did not transport said wheat carefully or with due and diligent care, but on the contrary so wrongfully, carelessly and negligently conducted themselves, that eleven thousand (11,000) pounds of wheat while in their possession and under their control as such common carrier, became lost and only delivered eighty-four thousand one hundred (84,100) pounds of said wheat to the damage to this plaintiff in the sum of thirty and 90/100 ($30.90) dollars; that this plaintiff is the owner of and lawful holder of the said bill of lading and as such brings this action.

Wherefore, plaintiff prays for judgment against this defendant for the sum of thirty and 90/100 ($30.90) dollars with interest thereon according to law, together with the costs and disbursements of this action.

ALEX KANTER,
Attorney for Plaintiff.

354 Security Building, Minneapolis, Minnesota.

(Title of Cause.)

Notice of Motion.

To the above-named plaintiff and to Alex Kanter, its attorney:

You will please take notice that on the 15th day of June, 1920, at 2 P. M., or as soon thereafter as counsel can be heard, this defendant appearing specially and for the purpose of this motion only, will move the above named court at a special term thereof, to be held on the above date, at the Court House and City Hall in the City of Minneapolis, in said county and state, for an order quashing, vacating and setting aside the service of the summons and complaint in said action upon the following grounds:

I.

That the Atchison, Topeka & Santa Fe Railway Company at the time of the service of the summons and complaint herein was a railway corporation organized and existing under and by virtue of the laws of the State of Kansas and owning and operating a line of railway in said state of Kansas and other states; but that said

Railway Company does not own or operate and never has owned or operated any line of railroad within the State of Minnesota; and does not do and never has done any business within said state except the solicitation of interstate freight and passenger traffic to be transported over its line without said State of Minnesota; and that
7 this defendant did not at any time operate any lines of the Atchison, Topeka and Santa Fe Railway Company within the State of Minnesota.

II.

That E. L. Jansen upon whom the pretended service of the summons and complaint was made April 7th, 1920, was not then and is not now a ticket or freight agent of defendant or of the Atchison, Topeka & Santa Fe Railway Company, save and except that said E. L. Jansen was and is engaged in the solicitation of freight and passenger traffic for transportation over the lines of the Atchison, Topeka & Santa Fe Railway Company without said state in interstate commerce.

III.

That Chapter 218, Laws of Minnesota, 1913 (General Statutes 1913, paragraph 7735), under which the pretended service was made.

(*a*) Is void as being in contravention of Article I, Paragraph VII, Constitution of Minnesota.

(*b*) Is void as being in contravention of Subdivision III, Section VIII, Article I, of the Constitution of the United States.

(*c*) Is void as being in contravention of Paragraph I, Article XIV, Amendments to the Constitution of the United States.

8 Said motion will be made upon the annexed special appearance and affidavits and upon all the files and records herein.

FARICY, McMEEKIN & QUINN,
Attorneys Appearing Specially for Defendant.

805-7 Commerce Building, St. Paul, Minnesota.

(Title of Couse.)

Special Appearance.

The above named defendant for the sole purpose of objecting to the jurisdiction of this court and for no other purpose does make a special appearance herein and does aver that this Honorable Court has no jurisdiction of the person of this defendant.

In this behalf defendant avers that on the 7th day of April, 1920, at Minneapolis, Minnesota, a pretended service of the summons and complaint herein was made by handing to and leaving with one E. L. Jansen copies thereof. Except as above stated, no service of the

summons and complaint herein or any other process has been made upon this defendant. Said pretended service was and is wholly null, void and ineffectual.

This defendant, Walker D. Hines, on said 7th day of April, 1920, was and now is the agent designated by the President of the
9 United States, under Section 206 (*a*) of an Act of Congress, approved February 28th, 1920, entitled, "An Act to provide for the termination of Federal Control of Railroads and Systems of Transportation; to provide for the settlement of disputes between carriers and their employees; to further amend an act entitled 'An Act to Regulate Commerce,' approved February 4th, 1887, as amended, and for other purposes," which Act of Congress is commonly known as the "Transportation Act, 1920;" that defendant as such agent is the proper party defendant in actions arising out of the federal operation of the railroad of the Atchison, Topeka & Santa Fe Railway Company; that the causes of action, if any, on which this suit is based, arose out of such federal operation of the Atchison, Topeka & Santa Fe Railroad as more particularly appears from the summons and complaint herein.

Defendant further avers that the manner of service of process upon him is prescribed in Section 206 (*b*) of said Transportation Act of 1920, and provides in substance that process may be served upon any agent or officer of the carrier operating such railroad or system of transportation, if such agent or officer is authorized by law to be served with process in proceedings brought against such carrier.

Defendant further avers that said E. L. Jansen was not on said 7th day of April, 1920, or at any other time, a ticket or freight agent of said defendant or of the said Atchison, Topeka & Santa
10 Fe Railway Company, save and except that said E. L. Jansen was and is engaged in the solicitation of interstate freight and passenger traffic, moving on the lines of said Atchison, Topeka & Santa Fe Railway Company, wholly outside this state, that said E. L. Jansen never at any time solicited freight or passenger traffic for this defendant's operation of the line of railroad of said Atchison, Topeka & Santa Fe Railway Company.

Defendant further avers that the pretended service herein was made under Chapter 218, Laws of Minnesota, 1913 (General Statutes 1913, paragraph 7735), which defendant respectfully avers:

(1) Is void as being in contravention of Article 1, Paragraph VII, Constitution of Minnesota.

(2) Is void as being in contravention of Subdivision 3, Section VIII, Article 1, of the Constitution of the United States.

(3) Is void as being in contravention of Paragraph 1, Article XIV, Amendments to the Constitution of the United States.

Wherefore, this defendant appearing specially and not otherwise, prays this Honorable Court that the pretended service of the summons and complaint herein be adjudged null and void and vacated

and set aside and that this Court adjudge that it has no jurisdiction over the person of this defendant.

FARICY, McMEEKIN & QUINN,
Attorneys Appearing Specially for Defendant.

805-7 Commerce Building, St. Paul, Minnesota.

11 STATE OF MINNESOTA,
County of Ramsey, ss:

William T. Faricy, being first duly sworn, deposes and says that he is one of the attorneys for the defendant, appearing specially in the above entitled action; that he has read the foregoing special appearance and knows the contents thereof; that the same is true to the best of his knowledge, information and belief; that the reason this verification is not made by the defendant is that said defendant is without the State of Minnesota, wherein resides affiant.

WILLIAM T. FARICY.

Subscribed and sworn to before me this 3rd day of June, 1920.
[SEAL.] JOHN P. KENNEDY,
Notary Public, Ramsey County, Minn.

My commission expires Aug. 24, 1921.

(Title of Cause.)

Affidavit.

STATE OF MINNESOTA,
County of Ramsey, ss:

E. L. Jansen, being first duly sworn, deposes and says that he makes this affidavit for the purpose of setting aside the pretended service of the summons and complaint in the above entitled action, which were handed to him by some persons unknown to him at Minneapolis Minnesota, April 7th, 1920.

12 That he is employed by the Atchison, Topeka & Santa Fe Railway Company as general agent of its freight and passenger departments for the State of Minnesota and contiguous territory; that said Atchison, Topeka & Santa Fe Railway Company does not own or operate and never has owned or operated any line of railroad within the State of Minnesota, and does not do and never has done any business within said state except the solicitation of interstate freight and passenger traffic to be transported over the line of said Atchison, Topeka & Santa Fe Railway Company without said State of Minnesota.

Affiant further says that he has no authority to accept service of summons herein or to represent the said Atchison, Topeka & Santa Fe Railway Company or the defendant Walker D. Hines herein, in any way in any litigation against the said Atchison, Topeka & Santa Fe Railway Company or said defendant Walker D. Hines in said state, but was authorized solely and only to solicit and procure

freight and passengers for transportation over the lines of said Atchison, Topeka & Santa Fe Railway Company without said state in interstate commerce.

Affiant further says that his duties in the soliciting of freight include the receiving of orders from shippers for the changing and diverting of shipments in transit over the lines of said Atchison, Topeka & Santa Fe Railway Company, which orders he transmits to the proper operating officials of said Atchison, Topeka, & Santa Fe Railway Company outside the State of Minnesota, who thereupon comply with the same; and that in such cases, for the convenience of shippers who have received bills of lading from other lines for through shipments of goods to be transported for a part of the journey over the lines of the said Atchison, Topeka & Santa Fe Railway Company without said State of Minnesota, he gives in exchange therefor bills of lading over the lines of the said Atchison, Topeka & Santa Fe Railway Company, which as expressly provided in said bills of lading, are not in force until the freight is received by the said Atchison, Topeka & Santa Fe Railway Company.

That affiant's duties include the quoting of rates to prospective customers, which rates are those established by the published tariffs on file with the Interstate Commerce Commission, and the procuring from the proper officials of said Railway Company, at the request of shippers or consignees or owners of shipments received for transportation over its lines without this state, of information as to the location of the shipments so transported by said company, and transmitting such information to said shippers, consignees or owners.

Affiant further says that he did not solicit or request the plaintiff herein to route or ship any of the various shipments, for loss and damage to which this action is brought, over the line of said Atchison, Topeka & Santa Fe Railway Company, and did not at any time represent this defendant Walker D. Hines during federal operation of said Atchison, Topeka & Santa Fe Railway Company in the solicitation of freight and passenger traffic or otherwise.

Affiant further says that the shipment for loss and damage to which this action is brought did not move from, into or through the State of Minnesota, but on the contrary, moved wholly outside said State of Minnesota.

Affiant further says that this affidavit contains a full and complete statement of the duties of affiant as general agent of said Atchison, Topeka & Santa Fe Railway Company at Minneapolis, Minnesota.

E. L. JANSEN.

Subscribed and sworn to before me this 3rd day of June, 1920.

[SEAL.] WILLIAM T. FARICY,
Notary Public, Ramsey Co., Minn.

My commission expires April 15, 1921.

(Title of Cause.)

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled action through their respective attorneys, that the attached affidavit may be filed with and considered a part of the motion papers heretofore served and filed in defendant's special appearance and motion to set aside the service of the summons and complaint herein.

15 It is further stipulated that if plaintiff desires to file any additional affidavits, he may do so, attaching the same to his affidavits heretofore served and filed, and submit them with his brief herein.

ALEX KANTER,
Attorney for Plaintiff.
FARICY, McMEEKIN & QUINN,
Attorneys for Defendant.

(Title of Cause.)

Affidavit.

STATE OF MINNESOTA,
County of Ramsey:

William T. Faricy, being first duly sworn, deposes and says that he is a practicing lawyer at the City of St. Paul, Minnesota, and is a member of the firm of Faricy, McMeekin & Quinn; that he and his firm are the attorneys in Minnesota for Walker D. Hines, as agent designated by the President under "Transportation Act, 1920" in cases brought in Minnesota against said Hines, arising out of the federal control and operation of the lines of railroad belonging to the Atchison, Topeka & Santa Fe Railway Company.

That since the opening of the office of E. L. Jansen, as soliciting freight and passenger agent of said Atchison, Topeka & Santa Fe Railway Company at Minneapolis, Minnesota, in March, 1920, there have been commenced by services of summons upon said Jansen, and are in affiant's office for purposes of defense, eleven (11) suits against said Walker D. Hines as agent designated by the

16 President under "Transportation Act, 1920," arising out of federal control and operation of the lines of railway of said Atchison, Topeka & Santa Fe Railway Company, and that several of said cases each contain a number of causes of action arising out of many different shipments; that forty-nine (49) shipments are involved in said cases and that practically all of said shipments did not move into or through Minnesota, and that in practically all of said cases the plaintiffs are not and never have been residents of the State of Minnesota.

That in order to defend said cases on the merits it will be necessary for the employees and train crews of said Atchison, Topeka &

Santa Fe Railway Company, engaged in interstate commerce who handled each of the forty-nine (49) shipments referred to above, to be absent from their work and to attend the trials of the above mentioned actions at Minneapolis, Minnesota; that traveling to and from Minneapolis and waiting for said cases and each of them to be called for trial, will necessitate the absence of said employees from their work for a number of days above and beyond the time which would be necessary if said actions and each of them were or had been brought in the localities in which the cause of action, if any, pleaded therein arose.

WILLIAM T. FARICY.

Subscribed and sworn to before me this 22nd day of June, 1920.

[SEAL.] THOMAS F. QUINN,
Notary Public, Ramsey County, Minn.

My commission expires April 17, 1922.

17 (Title of Cause.)

Order Denying Motion.

The above entitled cause came on before the undersigned, one of the judges of said Court, in chambers, on the 15th day of June, 1920, upon the motion of the defendant for an order to vacate and set aside the service of the summons in said above entitled action on the ground that the court has no jurisdiction of the defendant. Messrs. Faricy, McMeekin & Quinn appeared specially in support of said motion, and Mr. Alex. Kanter appeared for plaintiff in opposition thereto.

And the Court having heard the arguments of the respective parties, and duly considered the same,

It is ordered, that said motion be, and the same is hereby, in all things, denied.

Dated August 25, 1920.

By the Court: C. L. SMITH,
Judge.

A stay of 20 days is ordered from the filing of this order.

Memorandum.

The question involved on this motion is clearly presented as to the question of facts and as to the law.

It is conceded by counsel for both parties that the ruling of the Supreme Court of the United States on this question is con-
18 clusive, and if there is any conflict in the holding of the Supreme Court of the State of Minnesota and the Supreme Court of the United States, then the ruling of the latter is controlling.

It is also conceded by both parties that the ruling in the case of Armstrong Company v. New York Central & Hudson River Railroad Co., 129 Minn. 104, is adverse to the contention of the defendant in this motion.

However, it is the contention of the defendant that the holding of the United States Supreme Court in Philadelphia & Reading Railway Company v. McKibbin, 243 U. S. 264, which decision is of later date than the Armstrong case, holds to the contra, and overrules the former decision of the United States Supreme Court upon which the Armstrong case is founded.

The single question of law involved in these cases as presented in this motion is: "What constitutes doing business in this state?" Nowhere in the McKibbin case does the United States Supreme Court affirmatively state that it overrules its former decision. And as our state Supreme Court considered and construed in the Armstrong case similar language to that of the United States Supreme Court in the McKibbin case and held that the state court had jurisdiction it would be both unwise and presumptious for an inferior court to construe the language of the United States Supreme Court to the contrary. Moreover, in the McKibbin case there was no
19 such statute involved as Chap. 218, of Laws of 1913 of Minnesota, and a careful reading of the Armstrong case shows that it is an important factor in the conclusion of the court in that case. Let this memorandum be a part of the foregoing order.

(Title of Cause.)

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled action, through their respective attorneys, that the title to said action may be and hereby is amended, so as to provide for the following as defendant: "John Barton Payne, as agent designated by the President under Transportation Act, 1920."

This stipulation shall not be construed as a waiver of defendant's right to contest the jurisdiction of this Court over the person of the defendant nor as a general appearance.

ALEX KANTER,
Attorney for Plaintiff.
FARICY, McMEEKIN & QUINN,
Attorneys for Defendant.

Dated this 15th day of September, 1920.

20 (Title of Cause.)

Answer.

The above named defendant, after the overruling of his motion to set aside service of the summons and complaint in this action and following his special appearance, and without waiving his right

to further contest the jurisdiction of this Honorable Court over his person, either in this or appellate courts, for his answer to the complaint of the plaintiff herein:

I.

Alleges that Walker D. Hines, the predecessor of this defendant on the 7th day of April, 1920, the date on which the pretended service of the summons and complaint herein was made, was the agent designated by the President of the United States under Section 206 A of an Act of Congress, approved February 28th, 1920, entitled "An Act to provide for the termination of Federal Control of Railroads and systems of transportation; to provide for the settlement of disputes between carriers and their employees; to further amend an Act entitled 'An Act to regulate Commerce,' approved February 4th, 1887, as amended and for other purposes," which Act of Congress is commonly known as the "Transportation Act, 1920"; that defendant as such agent is now the proper party defendant in actions arising out of federal operation of the railroad of the Atchison, Topeka & Santa Fe Railway Company; that the cause of action, if any, on which this suit is based, arose out of such federal operation of said Atchison, Topeka & Santa Fe Railway as more particularly appears from the summons and complaint herein.

II.

Alleges that E. L. Janson, upon whom said pretended service was made was not on said 7th day of April, 1920, or at any other time, a ticket or freight agent of said Director General of Railroads or of Defendant or of said Atchison, Topeka & Santa Fe Railway, save and except that said E. L. Janson was and is engaged in the solicitation of interstate freight and passenger traffic moving on the lines of said Atchison, Topeka & Santa Fe Railway Company, wholly outside this state; and that said E. L. Janson never at any time solicited freight or passenger traffic for this Defendant's operation over the line of railroad of said Atchison, Topeka & Santa Fe Railway Company.

III.

Alleges that the pretended service herein was made under Chapter 218 Laws of Minnesota, 1913 (General Statutes 1913, paragraph 7735) which Defendant respectfully avers.

1. Is void as being in contravention of Article 1, Paragraph 7, of the Constitution of Minnesota.

2. Is void as being in contravention of Subdivision 3, Section 8, Article 1, of the Constitution of the United States.

3. Is void as being in contravention of Paragraph 1, Article 14, Amendments to the Constitution of the United States.

IV.

Admits and alleges that on or about the 5th day of August, 1919, at Isabel, Kansas, said Director General of Railroads received car A. C. L. 33957 containing wheat for transportation from said Isabel, Kansas to Hutchinson, Kansas, and that in accordance with the bill of lading then and there issued therefor, said Director General of Railroads duly and safely transported said wheat from Isabel, Kansas to Hutchinson, Kansas, and there delivered the whole thereof to the consignee of said shipment.

V.

Alleges that said car of wheat was so received and transported under the terms and conditions of a written contract or bill of lading wherein and whereby in consideration of a reduced rate of freight it was mutually agreed that such receipt and transportation should be governed by the following provisions among others:

"No carrier or party in possession of any of the property herein shall be liable for differences in the weights of grain, seed or other commodities caused by natural shrinkage or discrepancy in elevator weights."

23 Alleges that said bill of lading was a part of the duly filed and published tariffs applying to said shipment, and was expressly subject to said tariffs, which contained in addition to the foregoing the following provisions:

(*a*) Carriers will not be responsible for loss due to natural shrinkage.

(*b*) When liability is established, there shall be deducted from the loss in weight the following percentage of the total weight of the contents of the car:

One-eighth (⅛) of one (1) per cent on wheat, rye, oats and other small grain.

One-quarter (¼) of one (1) per cent on corn.

(*c*) These deductions representing reasonable shrinkage due to evaporation or other natural causes to be made from shipping weights."

VI.

Save as hereinbefore admitted or qualified Defendant denies each and every allegation in said Complaint contained.

Wherefore, Defendant prays this Honorable Court that the pretended service of the Summons and Complaint herein be adjudged null and void and of no effect, and that this Court adjudge that it has no jurisdiction over the person of this Defendant and that

Plaintiff take nothing by this action, and that Defendant have Judgment for his costs and disbursements herein.

FARICY, McMEEKIN & QUINN,
Attorneys for Defendant.

805-7 Commerce Building, St. Paul, Minnesota.

(Title of Cause.)

Reply.

Now comes the plaintiff and for a reply to the answer of the defendant in the above entitled action

I.

Denies each and every allegation, matter, statement and thing in said answer contained and all thereof save and accept as the same admits the allegations of plaintiff's complaint.

Wherefore plaintiff again prays judgment as in said complaint demanded.

ALEX. KANTER,
Attorney for Plaintiff.

354 Security Building, Minneapolis, Minnesota.

(Title of Cause.)

The cause above entitled came on for hearing on Tuesday, February 1, 1921, in the City of Minneapolis, State of Minnesota, at the Court House in the said city, in its order upon the calendar on said date, before Honorable Chas. L. Smith, one of the Judges, without a jury, according to law.

Alex. Kanter, Esq., 354 Security Building, Minneapolis, Minn., appeared as counsel for and on behalf of the Complainant, and William T. Faricy, Esq., of Messrs. Faricy, McMeekin, Quinn & Swan appeared for and on behalf of the Respondent. The following witnesses were sworn and testified and the proceedings had therein as hereinafter appears; the same having been reported by me and transcribed under my direction.

RICHARD A. MABEY,
Official Shorthand Court Reporter, Minneapolis.

(Title of Cause.)

Case No. 147,830.

I hereby certify that I was the Official Court Reporter in attendance upon the trial of the above entitled action in this court on the first day of February, 1921, and made a shorthand report of all

proceedings had upon said trial, and that the transcript to which this certificate is attached is a full, complete and correct re-
26 port of all the evidence offered or produced upon the trial of this cause, and all objections, rulings, amendments, stipulations, admissions or agreements made and entered into during the course of said trial, and all other proceedings occurring upon the hearing of said controversy.

RICHARD A. MABEY,
Official Court Reporter.

429-431 Court House, Minneapolis, Minn.

(Title of Cause.)

Mr. Fariey: May it please the Court, the defendant renews its motion to dismiss this action on the ground that chapter 218 of the Laws of Minnesota for 1913, being the general statutes of 1913, paragraph #7735 under which the pretended service of the summons and complaint was made, first, is void as being in contravention of article 1, paragraph 7 of the Constitution of Minnesota; (2) is void as being in contravention of paragraph 3, article 1, of the Constitution of the United States; (3) is void as being in contravention of paragraph 1, article 14, of the amendment to the Constitution of the United States.

It is conceded that the service in this case was made under section 7735 of the general statutes of 1913 upon a soliciting freight and passenger agent of the Atchison, Topeka & Santa Fe Rail-
27 road Company having his office at Minneapolis, Minnesota, for the solicitation of interstate freight and passenger traffic. The defendant in this connection calls attention to the fact that it made its special appearance and motion to set aside the service before putting in its answer or general appearance, and calls attention to the fact that its answer or general appearance was put in only after the overruling of its motion to dismiss and special appearance.

The Court: Motion denied.

Mr. Fariey: Note an exception.

Mr. Kanter: Your Honor, this is an action for an alleged shortage of grain shipped from Isabelle, Kansas, to Hutchinson, Kansas, wherein the plaintiff sustained a loss approximating $30.90. On the 30th of September a stipulation was entered into between counsel for the plaintiff and defendant which reads thusly:

"It is hereby stipulated and agreed by and between the parties to the above entitled action, through their respective attorneys, that the document hereto attached and marked plaintiff's exhibit A is the original bill of lading issued by the agent of the Director General of Railroads at Isabel, Kansas, governing the shipment of car L. & N. 15493 containing wheat shipped by the plaintiff herein from Isabel, Kansas, to Hutchinson, Kansas, and that the signatures to said bill of lading are the signatures of said agent of the
28 Director General of Railroads at Isabel, Kansas, and the agent of the plaintiff herein. This stipulation shall not be

construed as a voluntary submission by the defendant to the jurisdiction of this Court, and is made only after the overruling of the defendant's special appearance and the denying of his motion to set aside the service of the summons and complaint herein."

This stipulation was signed by both parties to this action. If I am not in error, I think the weight as set forth in the bill of lading was agreed upon as the loading weight. Is this right, Mr. Faricy?

Mr. Faricy: Well, the bill of lading contains a notation showing the weight of the car at point of origin, and I assume that, under the rules in these grain cases, the loading weight in the bill of lading makes out a prima facie case.

Mr. Kanter: It was 85,200 pounds of bulk wheat, and, your Honor, we now offer this bill of lading as plaintiff's exhibit A, showing that the shipment moved and the loading weight therein.

Mr. Faricy: The defendant objects to the introduction of any testimony in the case on the ground that the defendant is not properly in court, and that it is in court only after the overruling of its special appearance and motion to set aside the service, and on the ground that the statute, section 7735 of the general statutes of 1913 under which the pretended service was made (1) is void as being in contravention of article 1, paragraph 7, of the Constitution of Minnesota; (2) is void as being in contravention of subdivision 3, section 8, article 1, of the Constitution of the United States; (3) is void as being in contravention of paragraph 1, article 14, amendments to the Constitution of the United States.

The Court: Objection overruled.

Mr. Faricy: An exception.

The Court: Received.

Mr. Kanter: Your Honor, to prove the unloading weight and the price prevalent for this kind of wheat at destination counsel for defendant and myself have agreed upon certain depositions, and for the purpose of expediting matters I will read the material parts involved herein. This is the deposition of C. E. Jones, assistant manager for the Central Market of Hutchinson, Kansas.

Question. State your name, residence and occupation.

Answer. C. E. Jones, assistant manager for the Central Grain Company, Hutchinson, Kansas.

Question. What was your occupation on September 7, 1919?

Answer. Traffic manager and weight master for Larrabee Flour Mills Corporation, Hutchinson Mill.

Question. What company did you work for at that time?

Answer. Larrabee Flour Mills Corporation, and was bonded by the State of Kansas as weighmaster.

Question. Do you remember, without reference to any document or memorandum, whether you weighed a car of wheat contained in car L. & N. 15493 on or about September 7, 1919?

Answer. No.

Question. The notary will be at this time show you the document which he will mark for identification plaintiff's exhibit C. In whose handwriting does this document appear?

Answer. Same is signed by myself; the body by some clerk; don't know who.

Question. What is the document plaintiff's exhibit C?

Answer. Weight certificate of car 15493 L. & N.

Question. Was that document plaintiff's exhibit C made at the time of the transaction recorded therein?

Answer. Certificate was made after car was unloaded and weighed.

Question. Is plaintiff's exhibit C a true and correct record of the weight of the car of wheat numbered thereon?

Answer. Yes, it is.

Question. Is the signature C. E. Jones on said document, plaintiff's exhibit C, your signature?

Answer. Yes.

Question. Was plaintiff's exhibit C made in the usual course of business?

Answer. Yes.

We now offer the official weight certificate of the State of Kansas signed by a duly authorized weightmaster on car 15493 as evidence of the unloading weight of this particular car.

31 The Court: Received. What does that show?

Mr. Kanter: This shows 84,300 pounds of wheat, and it was weighed on the 7th of September, 1919.

I now offer the deposition of C. O. Heinley, of Hutchinson, Kansas, the acting manager of the Reno Flour Mills Company, and through this deposition we intend to prove the prevailing market price which this particular car brought.

Question. State your name, residence and occupation.

Answer. C. O. Heinly, Hutchinson, Kansas, Acting Manager Reno Flour Mills Company.

Question. What was your occupation on October 10, 1919?

Answer. Traffic manager for Reno Flour Mills Company.

Question. What company did you work for at that time?

Answer. Reno Flour Mills Company.

Question. Do you remember, without reference to any document or memorandum, whether you sold a carload of wheat contained in car L. & N. 15493 on or about October 10th, 1919?

Answer. No, sir.

Question. The notary will at this time show you the document which he will mark for identification plaintiff's exhibit B. In whose handwriting does this document appear?

Answer. Miss Ada Bradshaw.

Question. What is that document, plaintiff's exhibit B?

Answer. Account sales.

32 Question. It plaintiff's exhibit B a correct record of the sale of the car of wheat numbered thereon?

Answer. Yes.

Question. Was plaintiff's exhibit B made in the usual course of business?

Answer. Yes.

Question. What was the market value of wheat of the kind contained in that car at Hutchinson, Kansas, on the 10th day of October, 1919?

Answer. Price ranged from $2.07 to $1.94.

Question. What was the actual selling price of that car of wheat?

Answer. $2.06 "as is", basis Kansas City.

Mr. Kanter: Plaintiff rests.

The plaintiff rested.

Mr. Faricy: The defendant renews its motion to dismiss this action on the grounds that the defendant is not properly or legally served with process, and that it is in Court only after the overruling of its special appearance and motion to set aside the service, and on the ground that the statute, section 7735 of the general statutes of 1913 under which the pretended service was made (1) is void as being in contravention of article 1, paragraph 7, of the Constitution of Minnesota; (2) is void as being in contravention of subdivision 3, section 8 article 1, of the constitution of the United States; (3) is void as being in contravention of paragraph 1, article 14, amendments to the constitution of the United States.

The Court: Motion denied.

33 E. L. JENSEN, being first duly sworn to testify the whole truth and nothing but the truth relative to the matters in controversy in this action, testified as follows in answer to questions by counsel for the defendant Mr. Faricy.

Q. Mr. Jensen, you live in Minneapolis?

A. Yes, sir.

Q. And you were the soliciting freight and passenger agent for the Atchison, Topeka & Santa Fe Railway system at Minneapolis, Minnesota?

A. Yes, sir; under the title of general agent.

Q. Now, what is your territory over which you have charge?

A. Well, the freight and passenger territory covers the State of Minnesota, practically all the State of Iowa, North and South Dakota and part of Wisconsin.

Q. Now, in any of the territory for which you are soliciting freight and passenger business as agent under the title of general agent, does the Atchison, Topeka & Santa Fe operate any lines of railway?

A. No, not in the territory where I work, no.

Q. What are your duties as an employee of the Atchison, Topeka & Santa Fe?

A. Well, soliciting freight and passenger business and giving out information and all that.

Q. In other words, if I understand you correctly, your duties are

to obtain freight and passenger business in interstate traffic
34 for the Atchison, Topeka & Santa Fe Railway Company to move wholly outside of the State of Minnesota. Is that right?

A. Yes, sir.

Q. Now, as a part of your duties in the solicitation of freight, you receive orders from shippers for the changing and diverting of shipments in transit over the Santa Fe?

A. Yes, sir.

Q. And what do you do with those diversion orders?

A. Well, if a shipper places a diversion order with us we take the order and verify the facts and either wire or write to our officials in Chicago or Topeka, Kansas.

Q. Is that done for the convenience of your shippers and as a means of getting business?

A. Yes, sir.

Q. Now, when shippers who have bills of lading over other lines on through shipments, if it is to be transported for a part of the journey over your line, over the line of your company, without the state of Minnesota, do you give in exchange therefor bills of lading over the lines of your company?

A. Yes, sir.

Q. Now, those bills of lading are not in force until the freight is received by your line. I will ask that in a different way. Strike that out. You have a rubber stamp which you put on these bills of lading?

A. Yes.

35 Q. What does that rubber stamp provide?

A. Well, that stamp states that this bill of lading is issued in exchange for bill of lading so and so and for date so and so.

Q. Then when and under what conditions are those bills of ladings which you issue effective?

A. Well, the bills of lading become effective I should say when it is signed by myself.

Q. And it affects the shipment when your company receives the freight. Is that correct?

A. Yes, I would say that. Yes.

Q. Now, your duties also include the quoting of rates for prospective customers, do they not?

A. Yes, sir.

Q. And those rates I take it are the rates established by the published tariffs on file with the Interstate Commerce Commission?

A. Yes, sir; both freight and passenger.

Q. And your duties also include the tracing of shipments which are on your line?

A. Yes, sir.

Q. Now, by tracing you mean the locating and expediting of shipments for the patrons from whom you solicit freight and passenger business?

A. Yes, sir.

Q. Now, you have been present here when this testimony on behalf of the plaintiff has been given here in this case?

A. Yes.

Q. I will ask you whether you solicited or requested the plaintiff herein to route or ship the shipment for loss and damage for which this action is brought over the Santa Fe? You may, if you wish, in that connection examine the pleadings here so as to identify the particular shipment.

A. No, sir. I don't know anything about that shipment.

Q. And you didn't solicit it?

A. No, sir.

Q. Did you at any time represent the director general of railroads during federal operation of the Santa Fe in the soliciting of freight and passenger business?

A. In the State of Minnesota?

Q. Yes, in the State of Minnesota.

A. No, sir.

Q. What was your business during federal control?

A. I was assistant general agent at Kansas City, Missouri, for three months and then I was division freight agent at Joplin, Missouri, for about a year.

The Court: In Minneapolis at all?

The Witness: No, sir. I was away for two years.

The Court: How did this happen to be served upon you?

Mr. Fariey: This was served after the federal control expired.

Q. Now, Mr. Jensen, were you the gentleman upon whom the service of the summons and complaint in this case was made?

A. Yes, sir.

Q. And are you the E. L. Jensen who made and filed an affidavit in this case in support of the defendant's special appearance and motion to set aside service?

A. I am.

Q. I will ask you whether or not the Atchison, Topeka & Santa Fe is a Minnesota corporation?

A. No, sir; they are not.

Cross-examination.

By Mr. Alex Kanter, counsel for the plaintiff:

Q. You are what is called a soliciting freight agent for the Atchison, Topeka & Santa Fe for the business in the state of Minnesota and other states?

Mr. Fariey: That is conceded, if the Court please.

The Court: And was at the time the service was made upon you? Is that conceded?

Mr. Fariey: Yes, he was at that time.

Q. This question was not quite clear, you only signed bills of lading when you actually received the goods?

A. No, not in all cases. If a shipper diverts a shipment and asks me to issue an exchange bill of lading I sometimes issue an exchange bill of lading prior to the time the shipment reaches our line, but the exchange lading I issue bears that endorsement I spoke of before, that rubber stamp endorsement, which makes it really a part and parcel of the original bill of lading.

38 Q. That is, you issue a bill of lading when you have assurance that the commodity covered by the bill of lading is actually delivered to the railroad company?

A. Yes.

The Court: Will you please illustrate your method of soliciting and all the work you have to do with it? When you got the business what did you do?

The Witness: Well, when we get the shipment I had nothing to do with it at all. It is given to the Great Western here, for instance, and routed care of the Atchison, Topeka & Santa Fe at Kansas City or St. Joe, or at any other junction point. We endeavor to get all the freight business we can for our line at the nearest, or any junction point, and likewise passenger business. A shipper has five carloads going to California, for instance. We solicit the business, quoting the rates. We endeavor to give him the best service we can on claims and everything we can to satisfy him in the railroad end of his work.

The Court:

Q. Do you have anything to do with the bill of lading here?

A. No, sir. The bill of lading is issued by the initial line. The Great Western in that case.

The Court:

Q. Then might the thing go clear through to destination and you never hear anything more of it?

A. Yes, sir.

Mr. Fariey:

39 Q. And about passenger business. How do you solicit your passenger business, and what do you do after you get that business?

A. Well, we advertise in the papers our passenger service. We have traveling passenger agents going out to talk to prospective travelers. We give information regarding the route and hotels and the time transfers, and so forth. We give tickets to the public. They come in the office, for instance, and we give them a ticket if they want us to. We don't sell the ticket, but we issue our order on our connection, the Great Western or Burlington, for a ticket so and so, describing the ticket, and the Burlington gives to our office man the ticket, taking our order, and we take from the prospective traveler his money paying for the ticket and give to the Burlington or Great Western that money and take up the order. In that way

we supply the customer with a ticket without bothering him to go to the ticket office.

The Court:

Q. Does he pay you the part that belongs to your road as well as that part that belongs to the Burlington?
A. He pays the whole charge.

The Court:

Q. And you retain what belongs to your road?
A. We retain the money four or five hours and then give the whole amount to the initial lines that sells the ticket.

Mr. Faricy:

Q. The ticket is of whose issue?
A. The initial line issue; the Great Western line here, for instance.

Mr. Faricy:

Q. Supposing a man shipped five cars and he has a claim against your road for loss in transit or something else. What does he do?
A. He makes the claim on the Santa Fe, and sometimes sends the claim direct to our people in Topeka or Chicago, and sometimes gives it to me. I transmit it to the proper people in Chicago or Topeka as the case may be.
Q. When do you issue an exchange bill of lading? When you put on what you refer to as your rubber stamp? That is to simply clear up the matter about issuance of bills of lading in your office?
A. We issue the exchange lading for the benefit of the shipper. We issue it sometimes prior to the receipt of the shipment on our line and over—we don't always wish to delay the matter until the shipment is received by our line, but the lading always bears that rubber stamp.
Q. But you do issue bills of lading?
A. Yes, sir.
Q. And on this question of passengers, isn't it a fact—I suppose you take the tariff between Minneapolis and some point on the Santa Fe that is not covered by the portion of the Santa Fe road between Minneapolis and Santa Fe, but by use of the tariff isn't it a fact you solicit business on through tariff for business originating on one road and destined on the Santa Fe rather than the particular portion of the Santa Fe?

A. Yes, sir, we solicit business on the through road.

Q. You also receive copies of billing containing the description of shipments, points of origin, points of destination, name of consignee, name of consignor, and you are constantly occupied tracing those shipments to keep your clientele informed as to where those particular shipments are?

A. We receive car number and destination, that is about all, and we trace on that.

Mr. Faricy:

Q. And that is for the purpose, you might say, of keeping the customer satisfied?

A. Just simply for their convenience and as a means of getting more business.

The defendant rested.

Mr. Faricy: The defendant renews its motion to dismiss on the same grounds as the previous motions were made.

The Court: The same ruling. You may draw the findings.

Testimony closed.

42 PLAINTIFF'S EXHIBIT "A."

The Atchison, Topeka & Santa Fe Railway Company.

Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading, at Isabel, Kansas 8/25/19 from the Farmers Co-op. Equity Co. the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

43 Consigned to order of the Farmers Co-op. Equity Co.
Destination, Hutchinson, State of Kansas, County of ——.
Notify Reno Flour Mills Co., at Hutchinson, State of Kansas.
County of ——.
Route ——. Car Initial, L. & N. Car No. 15493.

No. packages.	Description of articles and special marks.	Weight (sub. to correct'n).
	Bulk Hard Wheat	85,200

126,154.
125,799.
355 Dumps.
4 Bu. to the dump.
1,420 Bu.
Nine grain doors used.

This car billed for official inspection.

THE FARMERS CO-OP. EQUITY CO.,
Shipper.

J. L. SAGE,
Agent,

Per —— ——.

Per MERTON ANDERSON,
Mgr.

44 PLAINTIFF'S EXHIBIT "B."

The Reno Flour Mills Co.

Hutchinson, Kansas, October 10, 1919.

To Farmers Equity Company,
Isabel, Kansas:

Car No.	Initial.	Commodity.	Pounds.	Bushels.	Price.	Basis.	Gross proceeds.
15493	L. & N.	Hd. Wht.	84,300	1,405	2.06	K. C. as is.	2,894.30

Charges:

Freight, 16½	139.10	
War Tax	4.17	
Inspection	.90	
Weighing	.50	
Total	144.67	144.67
Net		2,749.63
Your Draft		2,700.00
Balance, you		49.63

E.

W. B.

45 PLAINTIFF'S EXHIBIT "C."

Weight Certificate.

State of Kansas,

Grain Inspection and Weighing Department.

Kansas City, Kan.,
Hutchinson, Kan., 9-7-19.

This certifies that a Deputy Weighmaster, under supervision of the Kansas State Grain Inspection and Weighing Department, did weigh at ——,
Initial, L. & N.
Car No. 15493.
Initial, —, Car No. —.
Grain, Wheat.
Tract, —; Draft, —; Hopper, —.
Net Weight, 84,300; Time, 3:15.
Track, —; Set. —; Spout, —.

J. S. HART,
Chief Inspector,
By C. E. JONES.

Remarks.

All claims for damages must be filed at this office before grain has left the department. This Certificate applies to the original car weighed.

46 (Title of Cause.)

It is hereby stipulated by and between the parties hereto through their respective attorneys, that the foregoing proposed case, consisting of fourteen (14) pages of typewritten matter, may be taken as conformable to the truth and as containing all the evidence offered or introduced on the trial of this cause and also all objections, rulings, orders, and all other proceedings of such trial, and that the same may be settled and allowed as the settled case herein by the Hon. Chas. L. Smith without notice.

ALEX KANTER,
Attorney for Plaintiff.
FARICY, McMEEKIN, QUINN & SWAN,
Attorneys for Defendant.

March 2nd, 1921.

I hereby certify that the foregoing case, consisting of fourteen (14) pages of typewritten matter, has been examined by me and found conformable to the truth and to contain all the evidence of-

fered or introduced on the trial of this cause and also all objections, rulings, orders, and all other proceedings of such trial, and I hereby settle and allow the same as the settled case herein.

C. L. SMITH,
Dated March 2nd, 1921. *Judge.*

47 (Title of Cause.)

Findings of Fact and Conclusions of Law.

The above entitled action came on before the undersigned, one of the judges of this Court on the 1st day of February, 1921, for trial by the Court without a jury. Mr. Alex Kanter appeared as attorney for plaintiff and Messrs. Faricy, McMeekin, Quinn & Swan appeared as attorneys for the defendant. The Court having heard the evidence adduced by the respective parties and after hearing counsel, makes the following.

Findings of Fact.

1. That on the 21st day of March, 1918, the Congress of the United States passed an act authorizing the President of the United States to take possession and assume control of all systems of transportation and the appurtenances thereof, in the said United States, and that by proclamation dated December 20th, 1917, and April 11th, 1918, the President of the United States did take possession and assume control of all the systems of transportation and appurtenances thereof including the Atchison, Topeka & Santa Fe Railway. That on the 20th day of February, 1920, the Congress of the United States of America passed an act terminating federal control of all systems of transportation and the appurtenances thereof and author-
48 izing the President of the United States to designate an agent against whom suits in equity and actions at law based on causes of actions arising out of possession of and operation by the President of the railroad or systems of transportation of any carrier, might be brought, and that pursuant to the authority vested in him by the Congress of the United States of America, the President of the United States has heretofore appointed, designated and named John Barton Payne as the proper agent against whom said actions may be instituted, and that the said John Barton Payne is the proper party to be named defendant in this action.

2. That at the time of the shipment hereinafter described, the Atchison, Topeka & Santa Fe Railway Company's line of railway was operated by said director general of railroads as a common carrier of freight and passengers engaged in state and interstate commerce in various states but wholly outside of the State of Minnesota: that said line of railway extended among other places, from the station of Isabel, Kansas, to the station of Hutchinson, Kansas.

3. That the Atchison, Topeka & Santa Fe Railway Company at the time of the service of the summons and complaint herein was a

45 PLAINTIFF'S EXHIBIT "C."

Weight Certificate.

State of Kansas,

Grain Inspection and Weighing Department.

Kansas City, Kan.,
Hutchinson, Kan., 9-7-19.

This certifies that a Deputy Weighmaster, under supervision of the Kansas State Grain Inspection and Weighing Department, did weigh at ——,
Initial, L. & N.
Car No. 15493.
Initial, —, Car No. —.
Grain, Wheat.
Tract, —; Draft, —; Hopper, —.
Net Weight, 84,300; Time, 3:15.
Track, —; Set, —; Spout, —.

J. S. HART,
Chief Inspector,
By C. E. JONES.

Remarks.

All claims for damages must be filed at this office before grain has left the department. This Certificate applies to the original car weighed.

46 (Title of Cause.)

It is hereby stipulated by and between the parties hereto through their respective attorneys, that the foregoing proposed case, consisting of fourteen (14) pages of typewritten matter, may be taken as conformable to the truth and as containing all the evidence offered or introduced on the trial of this cause and also all objections, rulings, orders, and all other proceedings of such trial, and that the same may be settled and allowed as the settled case herein by the Hon. Chas. L. Smith without notice.

ALEX KANTER,
Attorney for Plaintiff.
FARICY, McMEEKIN, QUINN & SWAN,
Attorneys for Defendant.

March 2nd, 1921.

I hereby certify that the foregoing case, consisting of fourteen (14) pages of typewritten matter, has been examined by me and found conformable to the truth and to contain all the evidence of-

fered or introduced on the trial of this cause and also all objections, rulings, orders, and all other proceedings of such trial, and I hereby settle and allow the same as the settled case herein.

C. L. SMITH,
Dated March 2nd, 1921. *Judge.*

47 (Title of Cause.)

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The above entitled action came on before the undersigned, one of the judges of this Court on the 1st day of February, 1921, for trial by the Court without a jury. Mr. Alex Kanter appeared as attorney for plaintiff and Messrs. Faricy, McMeekin, Quinn & Swan appeared as attorneys for the defendant. The Court having heard the evidence adduced by the respective parties and after hearing counsel, makes the following.

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48 izing the President of the United States to designate an agent against whom suits in equity and actions at law based on causes of actions arising out of possession of and operation by the President of the railroad or systems of transportation of any carrier, might be brought, and that pursuant to the authority vested in him by the Congress of the United States of America, the President of the United States has heretofore appointed, designated and named John Barton Payne as the proper agent against whom said actions may be instituted, and that the said John Barton Payne is the proper party to be named defendant in this action.

2. That at the time of the shipment hereinafter described, the Atchison, Topeka & Santa Fe Railway Company's line of railway was operated by said director general of railroads as a common carrier of freight and passengers engaged in state and interstate commerce in various states but wholly outside of the State of Minnesota; that said line of railway extended among other places, from the station of Isabel, Kansas, to the station of Hutchinson, Kansas.

3. That the Atchison, Topeka & Santa Fe Railway Company at the time of the service of the summons and complaint herein was a

railway corporation organized and existing under and by virtue of the laws of the State of Kansas, and owning a line of railway in said State of Kansas and other states, but that said railway company does not own or operate and never has owned or operated any
49 line of railway within the State of Minnesota and that the director general of railroads did not at any time operate any line of railway of the Atchison, Topeka & Santa Fe Railway Company within the State of Minnesota; that said Atchison, Topeka & Santa Fe Railway Company on the date of the service of the summons and complaint herein maintained a soliciting freight and passenger agent at Minneapolis, Minnesota, named E. L. Jansen, for the purpose of soliciting and obtaining interstate freight and passenger traffic for transportation over the line of the Atchison, Topeka & Santa Fe Railway Company without the State of Minnesota; that said E. L. Jansen did not solicit or request the plaintiff herein to route or ship the car of wheat hereinafter described over the lines of the said Atchison, Topeka & Santa Fe Railway Company operated by said director general of railroads; that the summons and complaint herein were served upon E. L. Jansen under the authority of paragraph 7735 of the general statutes of Minnesota, 1913 and chapter 218 Laws of Minnesota, 1913.

4. That plaintiff is and during all times hereinafter mentioned, was a corporation organized and existing under and by virtue of the laws of the State of Kansas.

5. That at the station of Isabel, Kansas on or about the 25th day of August 1919, the plaintiff delivered to the director general of railroads, operating the line of railway of the Atchison, To-
50 peka & Santa Fe Railway Company as a common carrier, one carload of wheat, the property of the plaintiff consisting of Eighty-five Thousand Two Hundred (85,200) pounds, loaded and contained in L. & N. car 15493, billed and consigned for transportation over the line of said Atchison, Topeka & Santa Fe Railway Company as operated by said director general of railroads to Hutchinson, Kansas, there to be delivered to the order of the plaintiff.

6. That said director general of railroads did not transport said wheat carefully, but on the contrary negligently lost Eleven Hundred (1,100) pounds of said wheat while the same was in the possession and under the control of said director general of railroads as such common carrier; that said director general of railroads delivered Eighty-four Thousand One Hundred (84,100) pounds of said wheat to plaintiff's order at the destination of said shipment; that said wheat so lost as aforesaid was of the market value of Thirty and 90/100 ($30.90) dollars. The Court finds as

Conclusions of Law.

1. That plaintiff is entitled to judgment against said defendant in the amount of Thirty and 90/100 ($30.90) with interest thereon

the rate of six per cent per annum from the 25th day of August, 1919.

2. That plaintiff is entitled to judgment against said defendant for his costs and disbursements herein.

Let judgment be entered accordingly.

By the Court:

C. L. SMITH,
Municipal Judge.

Dated at Minneapolis, Minn., February 17, 1921.

A stay of ten days is hereby granted.

C. L. SMITH,
Judge.

(Title of Cause.)

Notice of Motion.

To the above named plaintiff and to Alex Kanter, its attorney:

You will please take notice that on the 23rd day of February, 1921, at 2 o'clock P. M., in the Court House in the City of Minneapolis, in the said County and State, defendant will move the Court for an order vacating and setting aside the Findings of Fact and Conclusions of Law herein which were duly filed herein on the 17th day of February, 1921, and for an order dismissing this action on the following grounds:

(a) That the Atchison, Topeka and Santa Fe Railway Company at the time of the service of the Summons and Complaint herein, owned and operated a line of railway in the State of Kansas and other states, but that said railway company did not own or operate and never has owned or operated any line of railway within the State of Minnesota and that said Atchison, Topeka & Santa Fe Railway Company did not do or transact any business within the said State of Minnesota save and except that one E. L. Hansen upon whom said service was made, was and is engaged in the solicitation of interstate freight and passenger traffic for transportation over the lines of said Atchison, Topeka & Santa Fe Railway Company without said state.

(b) That the defendant herein has not voluntarily submitted himself to the jurisdiction of this court, but on the contrary has specifically and continuously made due and proper objection thereto.

(c) That chapter 218 Laws of Minnesota 1913 (general Statute 1913, paragraph 7735) under which said service was made,

(1) Is void as being in contravention of Article One (1) paragraph Seven (7) Constitution of Minnesota.

2. Is void as being in contravention of Subdivision Three (3) Section Eight (8) Article One (1) of the Constitution of the United States.

3. Is void as being in contravention of paragraph One (1) Article Fourteen (14) Amendments to the Constitution of the United States.

That said motion will be made upon the files and records of said case and the testimony introduced at the trial of said case.

FARICY, McMEEKIN, QUINN & SWAN,
Attorneys for Defendant.

805 Commerce Bldg., St. Paul, Minn.

53 (Title of Cause.)

Order Denying Motion.

The above entitled case came on before the undersigned, one of the Judges of said Court at a special term thereof on the 23rd day of February, 1921, upon the motion of the defendant for an Order to vacate and set aside the Findings of Fact and Conclusions of Law heretofore entered on the 17th day of February, 1921, and for an Order dismissing the said action on the grounds that the Court has no jurisdiction of the defendant and that said defendant has not voluntarily submitted to the jurisdiction of this Court.

Messrs. Faricy, McMeekin, Quinn and Swan appeared for the defendant for support of said motion and Alex Kanter, appeared for the plaintiff in opposition thereto.

The Court having heard the arguments of the respective parties and after due consideration

It is ordered that the motion be, and the same hereby is in all things denied.

By the Court:

C. L. SMITH,
Judge.

Dated February 23, 1921.

54 (Title of Cause.)

Judgment March 9, 1921.

This cause came on for trial at a regular term of the above named Court, held on Tuesday, the 7th day of September, A. D. 1920, and was tried by the Court without a jury, on the 1st day of February, A. D. 1921, and the Court after hearing the evidence adduced at said trial, and being fully advised in the premises, did on the 17th day of February, A. D. 1921, duly make and file its findings and order for judgment herein.

Now, therefore, in accordance with said order, and on motion of Alex Kanter, plaintiff's attorney, it is hereby adjudged that the plaintiff recover of the defendant and each of them the sum of Thirty-three and 65/100 ($33.65) Dollars, the amount found due, and interest,

with Fourteen and 20/100 ($14.21) Dollars costs and disbursements, as taxed and allowed, amounting in all to the sum of Forty-seven and 85/100 ($47.85) Dollars.

By the Court.

HARRY MOORE,
Clerk of the Municipal Court.
By R. R. RIPPE,
Deputy.

$47.85.

55 (Title of Cause.)

Notice of Appeal.

To Alex Kanter, attorney for plaintiff, and to Harry Moore, Esquire, clerk of the above-named Court:

SIRS:

You will please take notice that the above named Defendant appeals to the Supreme Court of the State of Minnesota from that certain Judgment and the whole thereof entered in the above entitled action on the 9th day of March, 1921, for the sum of Forty-seven and 85/100 Dollars ($47.85), in favor of the Plaintiff and against said Defendant.

Dated March 10th, 1921.

FARICY, McMEEKIN, QUINN & SWAN,
Attorneys for Defendant.

805-7 Commerce Building, St. Paul, Minnesota.

56 (Title of Cause.)

Stipulation Waiving Bond.

Whereas the Defendant appeals to the Supreme Court of the State of Minnesota from that certain Judgment entered in the above entitled action on the 9th day of March, 1921.

Now, Therefore, it is Stipulated and Agreed by and between the parties to the above entitled action, through their respective attorneys, that the execution and filing by the Defendant of a bond of appeal in the above entitled action is hereby waived and that to all intents and purposes the appeal may be in all things prosecuted with the same effect as though a good and sufficient bond had been executed and filed, and that all further proceedings in the Municipal Court in the above entitled matter are hereby stayed until the final determination of the appeal in the Supreme Court.

Dated this 10th day of March, 1921.

ALEX KANTER,
Attorney for Plaintiff.
FARICY, McMEEKIN, QUINN & SWAN,
Attorneys for Defendant.

57 STATE OF MINNESOTA:

In Supreme Court.

On the 30th day of August, 1921, there was filed by appellant a brief which, as required by rule 19 of this court, contained an assignment of errors, which is in words and figures as follows, to-wit:

I.

The court below erred in denying defendant's motion to set aside the service of the summons.

II.

The Court below erred in denying defendant's motion to dismiss at the call of the case for trial.

III.

The court below erred in overruling defendant's objection to the introduction of any evidence in the case.

IV.

The court below erred in denying defendant's motion to dismiss at the conclusion of Plaintiff's case.

V.

The court below erred in denying the defendant's motion to dismiss at the conclusion of all the evidence.

VI.

The court below erred in its conclusion of law that plaintiff is entitled to judgment against defendant in the amount of thirty and 90/100 dollars ($30.90), or in any amount whatsoever, for the reason that the findings of fact do not support the jurisdiction of the court over the person of the defendant.

VII.

The court below erred in entering judgment against the defendant for the reason that said judgment operates to deprive defendant of his property without due process of law, in violation of the Fourteenth Amendment to the Federal Constitution, and in violation of Article 1, paragraph 7 of the Constitution of Minnesota.

VIII.

The court below erred in entering judgment against the defendant for the reason that said judgment operates to place unreasonable conditions, burdens and restraints upon defendant's constitutional right to engage in interstate commerce, in violation of Subdivision 3, Section 8, Article 1 (The Commerce Clause) of the Federal Constitution.

IX.

The court below erred in denying defendant's motion to vacate and set aside the findings of fact and conclusions of law and to dismiss the action.

X.

The rulings and holdings of the court below in denying defendant's various motions to dismiss and in entering judgment against defendant were repugnant to and in conflict with Section 206 of the Transportation Act, 1920.

XI.

The rulings and holdings of the Court below in denying defendant's various motions to dismiss and in entering judgment against defendant were repugnant to and in conflict with Article 1, Section 8, Subdivision 3 of the Constitution of the United States, and also the Fourteenth Amendment to said Constitution, and denied to Defendant rights, privileges and immunities thereby guaranteed.

I, Herman Mueller, do hereby certify that the foregoing and annexed is a true and correct copy of the original assignment of errors contained in the brief of the appellant herein and filed in this court pursuant to rule 19 of the rules of this court.

In testimony whereof I have hereunto set my hand and affixed the seal of this court at my office at St. Paul, Minnesota, this 1st day of February, 1922.

[Seal of Supreme Court, State of Minnesota.]

HERMAN MUELLER,
Clerk of the Supreme Court,
State of Minnesota.

Endorsed: #358. Hennepin County. Filed December 16th, 1921. Herman Mueller, Clerk.

22351.

FARMERS' CO-OPERATIVE EQUITY COMPANY, Respondent,

vs.

JOHN BARTON PAYNE, as Agent Designated by the President under Transportation Act of 1920, Appellant.

Per Curiam:

The defendant appeals from a judgment rendered by the municipal court of the city of Minneapolis for the loss, while in transit, of a quantity of grain shipped from Isabel, Kansas, to Hutchinson, Kansas, over the Atchison, Topeka and Santa Fe Railway while under Federal control. The railway company neither owns nor operates any line of railway in this State, but maintains, in this State, an agent for the solicitation of freight and passenger traffic over its lines outside of this State. It does no business in this State except to maintain such resident agent and solicit such traffic. The summons and complaint were served on this agent under and pursuant to section 7735 of the General Statutes of 1913, which provides,

"that any foreign corporation having an agent in this State for the solicitation of freight and passenger traffic or either thereof over its lines outside of this State, may be served with summons by delivering a copy thereof to such agent."

The defendant rests his appeal on the contention that, in so far as the statute provides that service on a soliciting freight or passenger agent shall confer jurisdiction over a foreign railway company which does no business in this State except to solicit freight and passenger traffic therein for its lines outside of the State, the statute contravenes the federal constitution and is void. This question has already been determined adversely to defendant by this court in the following cases: Armstrong v. N. Y. C. Ry. Co., 129 Minn. 104, 151 N. W. 917; Lagergren v. Penn. Ry. Co., 130 Minn. 35, 152 N. W. 1102; Rishmiller v. D. & R. G. Ry. Co., 134 Minn. 261, 159 N. W. 272; Merchant's Elev. Co. v. C. & O. Ry. Co., 147 Minn. 188, 179 N. W. 734; and Callahan v. U. P. Ry. Co., 182 N. W. 1004. We recognize that the final decision of this question rests with the Supreme Court of the United States, but, as we read its decisions, that court has not yet determined the question and, until it does, we feel constrained to follow our previous rulings. Judgment affirmed.

60 STATE OF MINNESOTA:

Supreme Court.

22361.

FARMERS CO-OPERATIVE EQUITY CO., Respondent,

vs.

JOHN BARTON PAYNE, as Agent Designated by the President under Transportation Act of 1920, Appellant.

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the Judgment of the Court below, herein appealed from, to-wit, of the Municipal Court within and for the County of Hennepin be and the same hereby is in all things Affirmed.

And it is further determined and adjudged that Respondent herein, do have and recover of Appellant herein the sum and amount of Forty and 50/100 Dollars, ($40.50) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed January 3rd, A. D. 1922.

By the Court.

Attest. HERMAN MUELLER,
Clerk.

Statement for Judgment.

Statutory Costs	$25.00
Return	
Appeal Bond	
Printer	15.25
Postage and Express	.25
Clerk	
Filing Mandate	
Acknowledgments	
Transcript	
Total	$40.50

[Endorsed:] Copy. State of Minnesota, Supreme Court. Transcript of Judgment. Filed Jany. 3d, A. D. 1922. Herman Mueller, clerk.

STATE OF MINNESOTA, *ss:*

Supreme Court.

Herman Mueller, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining

of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul —— —, A. D. 191-.

HERMAN MUELLER, *Clerk.*

61 Endorsed: Supreme Court. Filed Feb. 1, 1922. H Mueller, Clerk.

STATE OF MINNESOTA:

In Supreme Court.

FARMERS CO-OPERATIVE EQUITY COMPANY, Respondent,

vs.

JOHN BARTON PAYNE, Director General of Railroads as Agent Designated by the President under the Transportation Act of 1920, Appellant.

Petition.

Your petitioner, John Barton Payne, Director General of Railroads, as agent designated by the President under the Transportation Act of 1920, represents that he is aggrieved by a final judgment entered against him by the Supreme Court of the State of Minnesota on January 3, 1922, in an action at law then therein pending wherein this petitioner was appellant and the Farmers Co-operative Equity Company was respondent.

That said final judgment was entered in the highest Court of the State of Minnesota in a suit wherein was drawn in question the validity of a Statute of the State, Section 7735 of the Minnesota General Statutes of 1913, on the grounds of its being repugnant to the Constitution and the laws of the United States and the decision was in favor of the validity of the Statute; and the said judgment is against the Constitutional right claimed by this Petitioner and is contrary to the Constitution and laws of the United States; all of which will more fully appear in detail in the assignments of error presented herein and filed herein.

Wherefore, Your petitioner prays for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Minnesota, to the end that the record in said matter may be removed into the Supreme Court of the United

62 States and the error complained of by your petitioner may be examined and corrected and said judgment reversed.

And your petitioner will ever pray.

GARDINER LATHROP AND
THOMAS F. QUINN,
Attorneys for John Barton Payne, Director General of Railroads, as Agent Designated by the President under the Transportation Act of 1920.

Writ of Error allowed.
Dated January 31st, 1922.

CALVIN L. BROWN,
Chief Justice of Supreme Court, State of Minnesota.

63 Endorsed: Supreme Court. Filed Feb. 1, 1922. H. Mueller, Clerk.

STATE OF MINNESOTA:

In Supreme Court.

FARMERS CO-OPERATIVE EQUITY COMPANY, Respondent,

vs.

JOHN BARTON PAYNE, Director General of Railroads, as Agent Designated by the President under the Transportation Act of 1920, Appellant.

Assignment of Errors and Prayer.

Now comes John Barton Payne, Director General of Railroads as agent, designated by the President under the Transportation Act of 1920, the appellant above named, and says that the Supreme Court of the State of Minnesota, erred in its decision and judgment in said cause, as appears from the record therein, and that the errors committed are as follows:

I.

The Supreme Court of the State of Minnesota erred in holding that Chapter 218, Laws of Minnesota, 1913 (General Statutes 1913, Paragraph 7735) providing that any foreign corporation "having an agent in this State for the solicitation of freight and passenger traffic, or either thereof, over its lines outside of this State, may be served with summons by delivering a copy thereof to such agent" is not in conflict with, in violation of and repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States in that the same operates to deprive defendant and certain other citizens of the United States of the rights, privileges and immunities thereby guaranteed and to deprive defendant and others of property without due process of law and to deny defendant and others the equal protection of the law, and that said Statute also is in conflict with, repugnant to and in violation of Subdivision 3, Section 8, Article 1 (the Commerce Clause) of the Federal Constitution and Section 206 of the Transportation Act of 1920.

II.

The said Court erred in affirming the denial of defendant's motion to set aside the service of Summons.

III.

The said Court erred in affirming the denial of defendant's
64 motion to dismiss at the call of the case for trial.

IV.

That said court erred in affirming the overruling of defendant's objection to the introduction of any evidence in the case.

V.

That said court erred in affirming the denial of Defendant's motion to dismiss at the conclusion of Plaintiff's case.

VI.

That said court erred in affirming the denial of the defendant's motion to dismiss at the conclusion of all the evidence.

VII.

That said court erred in affirming the conclusion of law that plaintiff is entitled to judgment against defendant in the amount of Thirty and 90/100 ($30.90) Dollars, or in any amount whatsoever, for the reason that the Findings of Fact do not support the jurisdiction of the courts over the person of the defendant.

VIII.

That said court erred in upholding service of the writ upon the defendant on the faith of said Chapter 218, Laws of Minnesota 1913 (General Statutes 1913, paragraph 7735); and in affirming the entry of judgment against the defendant for the reason that said judgment operates to deprive defendant of his property without due process of law, and denies to defendant the equal protection of the laws, in violation of the Fourteenth Amendment of the Federal Constitution.

IX.

That said court erred in upholding service of the writ upon the defendant on the faith of said Chapter 218, Laws of Minnesota 1913 (General Statutes 1913, Paragraph 7735) and in affirming the entry of judgment against the Defendant for the reason that said judgment operates to place unreasonable conditions, burdens and restraints upon defendant's constitutional right to engage in
interstate commerce, in violation of sub-division 3, Section
65 8, Article 1 (the commerce clause), of the Federal Constitution.

X.

That said courts erred in affirming the denial of Defendant's motion to vacate and set aside the findings of fact and conclusions of law and to dismiss the action.

XI.

The rulings and holdings of said court in affirming the denial of Defendant's various motions to dismiss and in affirming judgment against defendant were repugnant to and in conflict with Section 206 of the Transportation Act, 1920.

XII.

The rulings and holdings of said court in affirming the denial of defendant's various motions to dismiss and in affirming judgment against defendant were repugnant to and in conflict with Article 1, Section 8, sub-division 3, of the Constitution of the United States and also the Fourteenth Amendment to said Constitution, and denied to defendant rights, privileges and immunities thereby guaranteed.

Wherefore, said appellant, John Barton Payne, Director General of Railroads, as agent designated by the President, under the Transportation Act of 1920, prays that for the errors aforesaid, the said judgment be reversed.

Dated this 31 day of January 1922.

GARDINER LATHROP AND
THOMAS F. QUINN,
Attorneys for John Barton Payne, Director General of Railroads, as Agent Designated by the President under the Transportation Act of 1920.

66 Endorsed: Supreme Court. Filed Feb. 1, 1922. H. Mueller, Clerk.

STATE OF MINNESOTA:

In Supreme Court.

FARMERS CO-OPERATIVE EQUITY COMPANY, Respondent,

vs.

JOHN BARTON PAYNE, Director General of Railroads, as Agent Designated by the President under the Transportation Act of 1920, Appellant.

Bond.

Know all men by these presents, that we, John Barton Payne, Director General of Railroads, as agent designated by the President under the Transportation Act of 1920, as principal, and the National Surety Company, a corporation, as surety, are held and firmly bound unto the above named respondent, Farmers Co-operative Equity Company, a corporation, in the sum of Five Hundred ($500.00) Dollars, to be paid to it and for the payment of which we bind ourselves and our successors and assigns firmly by these presents.

Sealed with our seals and dated this 31st day of January, 1922.

The condition of this obligation is such that, whereas the said John Barton Payne, Director General of Railroads, as agent designated by the President, under the Transportation Act of 1920, appellant, seeks to prosecute his writ of error in the Supreme Court of the United States and to reverse the judgment rendered in the above entitled cause by the Supreme Court of the State of Minnesota.

Now, therefore, if the above named appellant shall prosecute his writ of error to effect and answer all costs and damages which may be adjudged, if he fails to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

JOHN BARTON PAYNE.
Director General of Railroads, as Agent Designated by the President under the Transportation Act of 1920.
By THOMAS F. QUINN,
His Attorney.

67

NATIONAL SURETY COMPANY.
By L. A. GREEN, [SEAL.]
Its Attorney in Fact.

Witnesses:
WILLIAM T. FARICY.
M. TRECHERECISION.

STATE OF MINNESOTA,
County of Ramsey, ss:

On this 31st day of January, A. D. 1922, before me, appeared Thomas F. Quinn, to me personally known to be the same person who executed the foregoing bond in behalf of the principal and ac-

knowledged that he executed the same as the free act and deed of said principal, and for the uses and purposes therein set forth.

[SEAL.] WILLIAM T. FARICY,
Notary Public, Ramsey County, Minn.

My Commission Expires April 15, 1928.

STATE OF MINNESOTA,
County of Ramsey, ss:

On this 31st day of January, A. D. 1922, before me appeared L. A. Green, to me personally known, who, being by me duly sworn, did say that he is the Attorney-in-Fact of the National Surety Company, the corporation described in and who executed the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said L. A. Green acknowledged said instrument to be the free act and deed of said corporation.

[SEAL.] G. E. JOHNSON,
Notary Public, Ramsey County, Minn.

My Commission Expires —— —, ——.

The foregoing bond is hereby approved as a supersedeas this 31st day of January, A. D. 1922.

CALVIN L. BROWN,
Chief Justice Supreme Court of Minnesota.

68 Endorsed: Supreme Court. Filed Feb. 1, 1922. H. Mueller, Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of Minnesota, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Minnesota, before you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between Farmers Co-operative Equity Company, Respondent, vs. John Barton Payne, Director General of Railroads, as agent designated by the President under the Transportattion *Action* of 1920, Appellant, wherein was drawn in question the validity of a statute of the State of Minnesota, on the ground of its being repugnant to the Constitution and Laws of the United States, and the decision was in favor of its validity. A manifest error hath happened to the great damage of the said appellant as by his complaint appears.

We being willing that error, if any hath been, *could* be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that

then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, the 31st day of January, in the year of our Lord One Thousand Nine Hundred and Twenty-Two.

[Seal U. S. Dist. Court, Dist. of Minnesota, Third Division.]

JOEL M. DICKEY,
Clerk of the United States District Court for the District of Minnesota,
By MARGARET L. MULLANE,
Deputy Clerk.

Allowed January 31st, 1922.
CALVIN L. BROWN,
Chief Justice Supreme Court of Minnesota.

69 Endorsed: Supreme Court. Filed Feb. 1, 1922. H. Mueller, Clerk.

UNITED STATES OF AMERICA, *ss:*

To Farmers Co-operative Equity Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Minnesota, wherein John Barton Payne, Director General of Railroads, as agent designated by the President, under the Transportation Act of 1920 is plaintiff in error and you are Defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Calvin L. Brown, Chief Justice of the Supreme Court of the State of Minnesota, this 31st day of January, in the year of our Lord, One Thousand Nine Hundred and Twenty-Two.

CALVIN L. BROWN,
Chief Justice of the Supreme Court of the State of Minnesota.

Attest:

[Seal of the Supreme Court, State of Minnesota.]

HERMAN MUELLER,
Clerk Supreme Court of Minnesota.

Service of the foregoing citation is admitted and receipt of a copy thereof acknowledged this 1st day of February 1922.

ALEX KANTER,
Attorneys for Farmers Co-operative Equity Company.

70 STATE OF MINNESOTA:

In Supreme Court.

I, Herman Mueller, Clerk of the said Court, do hereby certify that there has been lodged with me as such clerk, in the matter of John Barton Payne, Director General of Railroads as agent, designated by the President under the Transportation Act of 1920, Appellant, vs. Farmers Co-operative Equity Company, Respondent:

1. The Original bond of which a copy is herein set forth.

2. Copies of the Writ of Error as herein set forth—one for each Respondent and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this 1st day of February, 1922.

[Seal of the Supreme Court, State of Minnesota.]

HERMAN MUELLER,
Clerk of the Supreme Court, State of Minnesota.

71 Endorsed: Supreme Court. Filed Feb. 1, 1922. H. Mueller, Clerk.

STATE OF MINNESOTA:

In Supreme Court.

FARMERS CO-OPERATIVE EQUITY COMPANY, Respondent,

vs.

JOHN BARTON PAYNE, Director General of Railroads, as Agent Designated by the President under the Transportation Act of 1920, Appellant.

To the clerk of the above-named court:

Will you please prepare transcript of record on Writ of Error, carrying the above entitled cause to the Supreme Court of the United States for review, said transcript to consist of the following:

1. Transcript of all proceedings in the Supreme Court of Minnesota, including the judgment entered therein and the opinion of the Court therein.

2. The original Petition for Writ of Error, original Assignment of Errors, copy of Bond, original Writ of Error, original Citation, certificate of Lodgment, your return to Writ of Error and this præcipe for Transcript.

3. Your certificate.

GARDINER LOTHROP AND
THOMAS F. QUINN,
Attorneys for John Barton Payne, Director General of Railroads, as Agent Designated by the President under the Transportation Act of 1920.

Dated February 1st, 1922.

Due service of the foregoing præcipe and a receipt of a copy thereof acknowledged this 1st day of February, 1922.

ALEX KANTER,
Attorney for Farmers Co-operative Equity Company.

72 STATE OF MINNESOTA, *ss:*

In Supreme Court.

I, Herman Mueller, Clerk of the Supreme Court of the State of Minnesota, in obedience to the Writ of Error herein issued, certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record, judgment and all of the proceedings had in said Supreme Court of the State of Minnesota in the case between John Barton Payne, Director General of Railroads, as agent designated by the President, under the Transportation Act of 1920, Appellant, and Farmers Co-operative Equity Company, Respondent, including the opinion of said Supreme Court filed upon the hearing in which the judgment herein was rendered.

I do further certify and return herewith a complete transcript of all the original files and papers transmitted to this Court by the Clerk of the Municipal Court of the City of Minneapolis, Minnesota, in which Court this cause originated.

I also return herewith the original petition for writ of error, original assignment of errors, copy of bond, original writ of error, original citation, certificate of lodgment, return to writ of error and præcipe for transcript of record.

I further certify that the foregoing constitutes a true, full and complete return to said writ of error.

In witness whereof I have hereunto set my hand and the seal of said Supreme Court of Minnesota, at the Capitol, St. Paul Minnesota, this 1st day of February, 1922.

[Seal of the Supreme Court, State of Minnesota.]

HERMAN MUELLER,
Clerk of the Supreme Court, State of Minnesota.

73 STATE OF MINNESOTA, *ss:*

Supreme Court.

In obedience to the commands of the within writ I hereby transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the case of John Barton Payne, Director General of Railroads as agent, designated by the President under the Transportation Act of 1920, Appellant vs. Farmers Co-operative Equity Company, Respondent, together with all things concerning the same.

In witness whereof I have hereunto set my hand and affixed the seal of said Court at my office in St. Paul, Minnesota, this 1st day of February, 1922.

[Seal of the Supreme Court, State of Minnesota.]

HERMAN MUELLER,
Clerk of the Supreme Court, State of Minnesota.

Endorsed on cover: File No. 28,704. Minnesota Supreme Court. Term No. 749. John Barton Payne, director general of railroads, as agent, &c., plaintic in error, vs. Farmers Co-operative Equity Company. Filed February 11th, 1922. File No. 28,704.

Office Supreme Court,
FILED
JAN 25 1923
WM. R. STANSBI
CLE

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1922.

No. 270

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT UNDER TRANSPORTATION ACT, 1920,
Plaintiff in Error,

vs.

FARMERS' CO-OPERATIVE EQUITY COMPANY,
Defendant in Error.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

GARDINER LATHROP,
HOMER W. DAVIS,
THOMAS F. QUINN,
Attorneys for Plaintiff in Error.

WILLIAM T. FARICY,
Of Counsel.

BUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1922.

No. 270

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT UNDER TRANSPORTATION ACT, 1920,

Plaintiff in Error,

vs.

FARMERS' CO-OPERATIVE EQUITY COMPANY,

Defendant in Error.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This writ of error is prosecuted for the purpose of bringing up for review by this court a judgment of the Supreme Court of Minnesota, entered January 3, 1922 (150 Minn. 534, 186 N. W. 130), on appeal from the Municipal Court of Minneapolis in an action brought by defendant in error, a Kansas corporation, against John Barton Payne, Director General of Railroads, as Agent, who was then the agent designated by

the President under subdivision (a) of Section 206 of the Transportation Act of 1920 (41 Stat. L. 456) as the party defendant in suits based on causes of action arising out of the possession, use or operation by the President of the railroad of any carrier.

The following brief opinion filed by the Supreme Court of Minnesota (Trans., 32) gives a bird's-eye view of the facts, the statute and the questions involved:

> "The defendant appeals from a judgment rendered by the municipal court of the city of Minneapolis for the loss, while in transit, of a quantity of grain shipped from Isabel, Kansas, to Hutchinson, Kansas, over the Atchison, Topeka and Santa Fe Railway while under Federal control. The railway company neither owns nor operates any line of railway in this State, but maintains, in this State, an agent for the solicitation of freight and passenger traffic over its lines outside of this State. It does no business in this State except to maintain such resident agent and solicit such traffic. The summons and complaint were served on this agent under and pursuant to section 7735 of the General Statutes of 1913, which provides,
> 'that any foreign corporation having an agent in this State for the solicitation of freight and passenger traffic or either thereof over its lines outside of this State, may be served with summons by delivering a copy thereof to such agent.'
>
> The defendant rests his appeal on the contention that, in so far as the statute provides that service on a soliciting freight or passenger agent shall confer jurisdiction over a foreign railway company which does no business in this State except to solicit freight and passenger traffic therein for its lines outside of the State, the statute contravenes the federal constitution and is void. This question has already been determined adversely to defendant by this court in the following cases: *Armstrong* v. *N. Y. C. Ry. Co.* 129 Minn. 104, 151 N. W. 917; *Lagergren* v. *Penn. Ry. Co.* 130 Minn. 35, 152 N. W. 1102; *Rishmiller* v. *D. & R. G. Ry. Co.* 134 Minn. 261, 159 N. W. 272; *Merchant's Elev. Co.* v. *C. & O. Ry. Co.* 147

Minn. 188, 179 N. W. 734; and *Callahan* v. *U. P. Ry. Co.* 182 N. W. 1004. We recognize that the final decision of this question rests with the Supreme Court of the United States, but, as we read its decisions, that court has not yet determined the question and, until it does, we feel constrained to follow our previous rulings. Judgment affirmed."

The facts more in detail and the proceedings prior to the affirmance of the judgment by the Supreme Court are as follows:

The suit was based upon an alleged negligent loss of 11,000 pounds of wheat from a carload shipment received for transportation August 25, 1919, at Isabel, Kansas, under a bill of lading issued by an agent of the Director General of Railroads engaged in the operation of the railroad of The Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as "Santa Fe"), said shipment having been destined to Hutchinson, Kansas, to which point it moved and where it was thereafter delivered. (Trans., 1, 2.)

The summons was served April 7, 1920, on one E. L. Jansen, a soliciting freight and passenger agent of the Santa Fe at his office at Minneapolis (Trans., 6, fol. 12), which was opened after the expiration of federal control of railroads. (Trans., 19, fol. 36.)

Subdivision (b) of Section 206 of the Transportation Act provides that process in suits based on causes of action arising out of the operation of any particular railroad by the President may be served upon any agent or officer of the carrier which after federal control operates such railroad, if such agent or officer is authorized by law to be served with process in proceedings against such carrier and the carrier has made a contract by or through the President for the conduct of litigation arising out of operation during Federal control.

No testimony was introduced by defendant on the merits of the case.

At the conclusion of plaintiff's case the motion to dismiss was again renewed. (Trans., 17.)

The trial court found as facts that the Santa Fe is a foreign corporation, doing no business in Minnesota, except such solicitation of interstate freight and passenger traffic as it did through Jansen; that the service was made under the section of the statutes in question and that the allegations of the complaint had been established by plaintiff. (Trans., 25, 26.) As a conclusion of law the court ordered judgment for plaintiff in the amount demanded in the complaint. (Trans., 26, 27.)

These findings, in so far as they are material to the question presented by this appeal, are as follows:

> "That at the time of the shipment hereinafter described, the Atchison, Topeka & Santa Fe Railway Company's line of railway was operated by said Director General of Railroads as a common carrier of freight and passengers engaged in state and interstate commerce in various states but wholly outside of the State of Minnesota; that said line of railway extended among other places, from the station of Isabel, Kansas, to the station of Hutchinson, Kansas.
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> That the Atchison, Topeka & Santa Fe Railway Company at the time of the service of the summons and complaint herein was a railway corporation organized and existing under and by virtue of the laws of the State of Kansas, and owning a line of railway in said State of Kansas and other states, but that said railway company does not own or operate and never has owned or operated any line of railway within the State of Minnesota and that the Director General of Railroads did not at any time operate any line of railway of the Atchison, Topeka & Santa Fe Railway Company within the State of Minnesota; that said Atchison, Topeka & Santa Fe Railway Company on the date of the service of the summons and complaint herein maintained a solicit-

ing freight and passenger agent at Minneapolis, Minnesota, named E. L. Jansen, for the purpose of soliciting and obtaining interstate freight and passenger traffic for transportation over the line of the Atchison, Topeka & Santa Fe Railway Company without the State of Minnesota; that said E. L. Jansen did not solicit or request the plaintiff herein to route or ship the car of wheat hereinafter described over the lines of the said Atchison, Topeka & Santa Fe Railway Company operated by said Director General of Railroads; that the summons and complaint herein were served upon E. L. Jansen under the authority of paragraph 7735 of the General Statutes of Minnesota, 1913, and Chapter 218, Laws of Minnesota, 1913."

The usual motion to amend the findings and conclusion, based upon the objections to the service and to the statute in question, were made (Trans., 27) and denied (Trans., 28), whereupon this appeal was taken from the judgment (Trans., 29) to the Supreme Court of Minnesota, where, by appropriate assignments of errors, (Trans., 30, 31) it was contended that the statute in question, as construed and applied by the trial court, when considered in the light of the facts in the case, was unconstitutional, being in conflict with the Fourteenth Amendment and the Commerce Clause as well as Section 206 of the Transportation Act, 1920, and that the judgment based thereon was, therefore, void and should be reversed.

The Supreme Court by its opinion (Trans., 32), quoted in full at the outset of this statement, overruled these contentions and affirmed the judgment on the strength of the statute.

In conformity with the federal statute requiring it, this court, under date of March 20, 1922, on motion duly made, substituted James C. Davis, the present Director General and agent designated by the President, for John Barton Payne, who held that office and was such agent when the suit was originally brought.

Specification of Errors Relied Upon.

1. The Supreme Court of the State of Minnesota erred in holding that Chapter 218, Laws of Minnesota, 1913, (General Statutes 1913, paragraph 7735), providing that any foreign corporation "having an agent in this state for the solicitation of freight and passenger traffic, or either thereof, over its lines outside of this state, may be served with summons by delivering a copy thereof to such agent" is not in conflict with, in violation of and repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States in that the same operates to deprive defendant and certain other citizens of the United States of the rights, privileges and immunities thereby guaranteed and to deprive defendant and others of property without due process of law and to deny defendant and others the equal protection of the laws, and that said statute, also, is in conflict with, repugnant to and in violation of subdivision 3, Section 8, Article 1 (the Commerce Clause) of the Federal Constitution and Section 206 of the Transportation Act of 1920.

2. The said court erred in affirming the denial of defendant's motion to set aside the service of summons.

3. The said court erred in affirming the denial of defendant's motion to dismiss at the call of the case for trial.

4. That said court erred in affirming the overruling of defendant's objection to the introduction of any evidence in the case.

5. That said court erred in affirming the denial of defendant's motion to dismiss at the conclusion of plaintiff's case.

6. That said court erred in affirming the denial of the defendant's motion to dismiss at the conclusion of all the evidence.

7. That said court erred in affirming the conclusion of law that plaintiff is entitled to judgment against defendant in the amount of Thirty and 90/100 ($30.90) Dollars, or in any amount whatsoever, for the reason that the findings of fact do not support the jurisdiction of the court over the person of the defendant.

8. That said court erred in upholding service of the writ upon the defendant on the faith of said Chapter 218, Laws of Minnesota 1913, (General Statutes 1913, paragraph 7735), and in affirming the entry of judgment against the defendant, for the reason that said judgment operates to deprive defendant of his property without due process of law, and denies to defendant the equal protection of the laws, in violation of the Fourteenth Amendment to the Federal Constitution.

9. That said court erred in upholding service of the writ upon the defendant on the faith of said Chapter 218, Laws of Minnesota 1913, (General Statutes 1913, paragraph 7735), and in affirming the entry of judgment against the defendant, for the reason that said judgment operates to place unreasonable conditions, burdens and restraints upon defendant's constitutional right to engage in interstate commerce, in violation of subdivision 3, Section 8, Article 1 (the Commerce Clause), of the Federal Constitution.

10. That said court erred in affirming the denial of defendant's motion to vacate and set aside the findings of fact and conclusion of law and to dismiss the action.

11. The rulings and holdings of said court in affirming the denial of defendant's various motions to dismiss and in affirming judgment against defendant were repugnant

to and in conflict with Section 206 of the Transportation Act, 1920.

12. The rulings and holdings of said court in affirming the denial of defendant's various motions to dismiss and in affirming judgment against defendant were repugnant to and in conflict with Article 1, Section 8, subdivision 3, of the Constitution of the United States, and also the Fourteenth Amendment to said Constitution, and denied to defendant rights, privileges and immunities thereby guaranteed.

BRIEF OF ARGUMENT.

I.

WHAT THE SUPREME COURT OF MINNESOTA MEANT BY SAYING THAT THE QUESTION IN THIS CASE NEVER HAD BEEN PASSED UPON BY THE SUPREME COURT OF THE UNITED STATES.

The concluding sentence of the decision of the Supreme Court of Minnesota in this case reads:

> "We recognize that the final decision of this question rests with the Supreme Court of the United States, but, as we read its decisions, that court has not yet determined the question and, until it does, we feel constrained to follow our previous rulings."

To ascertain the exact meaning of this sentence, it is necessary to examine the former Minnesota decisions cited.

In *Armstrong* v. *N. Y. C. Ry. Co.* 129 Minn. 104, 151 N. W. 917, the court for the first time considered the effect of the statute involved in this case, being Section 7735 of Minnesota General Statutes of 1913, which provides:

> "That any foreign corporation having an agent in this State for the solicitation of freight and passenger traffic or either thereof over its lines outside of this State, may be served with summons by delivering a copy thereof to such agent."

Service was there made upon a soliciting agent, and the cause of action arose outside of the state, but was based upon a shipment said to have been solicited by the agent on whom service was made.

The court said that the statute in explicit terms authorized the service and that the question in the case

was whether such a statute was unconstitutional. In holding that it was not, the court said:

> "Defendant relies upon the case of *Green* v. *C. B. & Q. Ry. Co.* 205 U. S. 530, 27 Sup. Ct. 595, 51 L. Ed. 916. It must be conceded that the facts in that case were much like those in the case at bar. The court held that doing business which was 'nothing more than solicitation' does not constitute 'doing business' so as to bring the defendant within the federal district, so that process of the United States courts of that district can be served upon it. In a later case it was said the decision in the Green Case was an 'extreme case' (*International Harvester* v. *Kentucky*, 234 U. S. 579, 586, 34 Sup. Ct. 944, 946 [58 L. Ed. 1479]), but it has never been overruled. However, in the Green Case the Roller Case (100 Fed. 738, 41 C. C. A. 22) is cited, and it is distinguished, but in no sense discredited or overruled. Speaking of the Roller Case the court said (205 U. S. 533, 27 Sup. Ct. 596, 51 L. Ed. 916): *'The action was brought in the state courts, and the question was of the interpretation of a state statute and the jurisdiction of the state courts.' The same observation applies to this case, and, whatever may be said of the similarity between the agency in this case and that in the Green Case, we feel warranted in accepting the distinction made in the Green Case and in following the Roller Case, the authority of which is not questioned.* * * *
>
> *We find no decision anywhere holding that, where a state statute expressly designates an agent with the powers possessed by Ballard in this case as a proper agent on whom to serve process, that service of process on such an agent is not due process of law.*"

Lagergren v. *Penn. Ry. Co.* 130 Minn. 35, 152 N. W. 1102, was simply a *per curiam* decision based on the *Armstrong* case.

In *Rishmiller* v. *D. & R. G. Ry. Co.* 134 Minn. 261, 159 N. W. 272, the cause of action arose wholly outside the state and had no connection with the business solicited

therein. In holding that the statute applied to such a case the court said:

> "This case differs from the Armstrong case only in the fact that the cause of action pleaded here arose out of the state. In the Armstrong case the fact that the cause of action arose out of business transacted in the state was referred to, but we do not regard that fact as of controlling importance. The statute is broad enough to authorize service upon such an agent in a case where the cause of action did not arise in the state, and we cannot hold the statute void."

In *Merchants Elevator Co.* v. *C. & O. Ry. Co.* 147 Minn. 188, 179 N. W. 734, the court said:

> "Our statute expressly provides that our courts may acquire jurisdiction over a foreign railway company, having an agent in this state for the solicitation of freight or passenger traffic over its lines outside of this state, by service on such agent. G. S. 1913, Sec. 7735. The cases cited by defendant do not consider the effect of such a statute, and the Green case intimates that the rule there applied, in a case involving the jurisdiction of a federal court, might not apply in a case involving the jurisdiction of a state court under a state statute."

The court reiterated its opinion in *Callahan* v. *Union Pac. Ry. Co.* 182 N. W. 1004, where the following language was used:

> "Whether maintaining an agent in a state for the solicitation of freight and passenger traffic over a railroad wholly outside the state is such a doing of business in the state as to enable the state to subject a foreign railway corporation to the jurisdiction of its courts is not free from doubt. The final determination of the question rests with the Supreme Court of the United States, and we do not understand that that court has yet decided it. Although recognizing the question as a close one, this court has upheld the statute and sustained the validity of the service upon such an agent in the cases cited. These decisions have established the rule for this state until it shall be definitely and finally determined by the federal court."

The position of the Supreme Court of Minnesota may, therefore, be stated briefly to be as follows:

1. Although service on a soliciting agent under the facts of the case at bar would not be due process of law were it not for the statute here in question, yet because of said statute such service and judgment do afford due process of law.

2. That to prohibit foreign railroad corporations from soliciting interstate commerce in Minnesota except upon the onerous condition that they shall be subject to suit on causes of action not arising in the state, while other foreign corporations are not so burdened in the solicitation of interstate commerce, affords railroad corporations the equal protection of the laws prescribed by the Fourteenth Amendment.

3. That the conditions imposed by said statute are not an unlawful burden upon and interference with interstate commerce, contrary to the Commerce Clause of the Federal Constitution.

Upon each of these propositions we think the Supreme Court of Minnesota was in error, as we shall endeavor to show.

II.

THE SANTA FE WAS NOT DOING BUSINESS IN MINNESOTA IN SUCH MANNER OR TO SUCH EXTENT AS TO SUBJECT IT TO BE SUED THERE AND, THEREFORE, THE SERVICE WAS NOT AUTHORIZED BY SECTION 206 OF THE TRANSPORTATION ACT. THE MINNESOTA STATUTE AS APPLIED TO THIS CASE IS IN CONFLICT WITH AND REPUGNANT TO THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

As above stated, Section 206 of the Transportation Act provides that in suits brought against the agent

designated by the President process may be served upon any agent or officer of a carrier, which, after federal control, operates the railroad out of the operation of which, during federal control, the cause of action arose, if a contract has been made with such carrier for the conduct of litigation, providing such agent or officer could have been served had the suit been brought against the carrier instead of the federal agent.

Such a contract was entered into with the Santa Fe. Unless, therefore, process could have been served on Jansen had this suit been brought against the Santa Fe there is no authority in law for serving him in a suit brought against the Director General on a cause of action arising out of federal operation of the railroad of the Santa Fe.

The evidence showed and the trial court found that the only business done by the Santa Fe in Minnesota was "soliciting and obtaining interstate freight and passenger traffic" (Trans. 26, fol. 49), and the Supreme Court of Minnesota said in its opinion (Trans. 32):

> "The railway company neither owns nor operates any line of railway in this state, but maintains in this state an agent for the solicitation of freight and passenger traffic over its lines outside of this state. It does no business in this state except to maintain such resident agent and solicit such traffic."

At the outset, for the purpose of argument, we concede that in all states in which a railroad corporation runs and operates a railroad it may be sued, if the state statutes authorize such suit, on any transitory cause of action, because in such states the corporation is transacting the business which was the prime purpose of its incorporation, and is doing business in such manner and to such an extent as to plainly manifest its presence there.

But where a corporation enters into the state not for the purpose of carrying on the main business for which it was chartered but simply for the purpose of carrying on some collateral and incidental business, such as solicitation of interstate traffic for transportation wholly without the state, that is in no true sense carrying on business so as to subject the corporation to suit, particularly on causes of action arising outside the state, in favor of nonresidents, and having no connection whatever with the business so solicited.

It is settled that if a corporation is not doing business in a state, it cannot be sued there, even though its officers or agents reside or are found in that state, notwithstanding the fact that the state statute authorizes service upon them.

This is well illustrated by the case of *Peterson* v. *C. R. I. & P. R. R.*, 205 U. S. 364, where service was attempted under certain Texas statutes to recover for the death of an engineer of the defendant which occurred in Indian Territory. In sustaining an order quashing service the court said (p. 393):

> "Nor do we think that the persons served with process are agents of the Pacific Company doing the business of the company in Texas. Section 2 of the Act of March 13, 1905, Laws of Texas, 1905, p. 30, is very broad, and would seem to comprehend conductors who handle trains for two or more corporations over foreign or domestic roads across the state lines of Texas and on the track of a domestic railroad within the State of Texas, or upon any agent who has an office in Texas and who sells tickets or makes contracts for the transportation of passengers or property over any line of railroad or part thereof, of any such foreign corporation or company; and such companies and agents by Section 3 of the act are made agents of the foreign corporation or company, upon whom the citation may be served. But it is essential to the validity of such

service that the corporation shall be doing business within the state, and that the service be upon an agent representing the corporation with respect to such business, *Goldie* v. *Morning News,* 156 U. S. *ubi supra; Conley* v. *Mathieson Alkali Co.,* 190 U. S. *ubi supra.*

The conductors, one of whom was served, when he crossed the Texas line, this record shows, became the servant and agent of the Gulf Company. The ticket agent sold tickets for the Gulf Company, in whose employment he was. He would also sell tickets good upon its line, and over the lines of the Pacific Company, but he transacted this business as the agent of the Gulf Company. As to Hovey, the record fails to show that he was agent of the Pacific Company; on the contrary, it shows that he had no connection with the company, and that his duties were confined to the affairs of the Gulf Company. The same is true of Merrell; and as to Sebree, the record shows that for the services rendered as trainmaster he was paid by each company for the service performed for it and had no charge as agent of the business of the Pacific Company in the State of Texas.

We reach the conclusion that the Pacific Company was not doing business in the State of Texas and that the attempted service was not upon agents of that company transacting its business in that state in such a sense as to give jurisdiction by service of citation upon them. The judgment of the Circuit Court is affirmed."

In this case it will be noted that the state attempted by statute to provide that if a foreign line of railroad permitted tickets to be sold in the state good over its line then the agent selling such ticket should be held to be the agent of the corporation on whom service of process might be made, but the court held that that was not doing business in the state and a state statute could not make it so.

The case of *Green* v. *C. B. & Q.,* 205 U. S. 530, clearly holds that activities such as that of the soliciting agent

of the Santa Fe in this case do not constitute doing business within a state. The duties of the agent on whom service was made in the *Green case* are stated by the court as follows, beginning on page 532:

> "The eastern point of the defendant's line of railroad was at Chicago, whence its tracks extended westward. The business for which it was incorporated was the carriage of freight and passengers, and the construction, maintenance and operation of a railroad for that purpose. As incidental and collateral to that business it was proper, and, according to the business methods generally pursued, probably essential, that freight and passenger traffic should be solicited in other parts of the country than those through which the defendant's tracks ran. For the purpose of conducting this incidental business the defendant employed Mr. Heller, hired an office for him in Philadelphia, designated him as district freight and passenger agent, and in many ways advertised to the public these facts. The business of the agent was to solicit and procure passengers and freight to be transported over the defendant's line. For conducting this business several clerks and various traveling passenger and freight agents were employed, who reported to the agent and acted under his direction. He sold no tickets and received no payments for transportation of freight. When a prospective passenger desired a ticket, and applied to the agent for one, the agent took the applicant's money and procured from one of the railroads running west from Philadelphia a ticket for Chicago and a prepaid order, which gave to the applicant, upon his arrival at Chicago, the right to receive from the Chicago, Burlington and Quincy Railroad a ticket over that road. Occasionally he sold to railroad employees, who already had tickets over intermediate lines, orders for reduced rates over the defendant's lines. In some cases, for the convenience of shippers who had received bills of lading from the initial line for goods routed over the defendant's lines, he gave in exchange therefor bills of lading over the defendant's line. In these

bills of lading it was recited that they should not be in force until the freight had been actually received by the defendant."

While it is true in that case a state statute authorizing service on soliciting agents was not involved yet that case is full authority to the effect that the Santa Fe was not doing business in Minnesota, while the case of *Peterson* v. *C. R. I. & P. Ry. Co., supra,* and other decisions hereinafter cited, conclusively show that neither a state statute nor a decision of the highest court of the state as to what constitutes doing business in a state can affect the power or control the action of this Court, which always has reserved unto itself the right in any particular case to decide whether the activities carried on by a foreign corporation in any state constitute doing business in such manner as to render the corporation liable to be sued.

In *International Harvester Co.* v. *Kentucky,* 234 U. S. 579, which was decided on writ of error from the Court of Appeals of Kentucky, there was a statute providing for service on various officers and employees of a foreign corporation. The attorneys for the International Harvester Company conceded that whether or not this statute in regard to service had been complied with was a question for the Kentucky courts to determine and the question decided by this court was, as is said on page 583, whether under the circumstances shown in the case the Harvester Company was carrying on business in the State of Kentucky in such manner as to justify the state court in taking jurisdiction of complaints against it.

So, in the case at bar, the ultimate question and the real question involved is whether or not the Santa Fe was carrying on business in Minnesota. If the Harvester Company had not been carrying on business in

Kentucky then, of course, the decision would have been otherwise, and if the Santa Fe was not carrying on business in Minnesota, then the lower court was wrong and its judgment should be reversed, regardless of any statute.

In the *International Harvester* case, it appeared that the company was doing a volume of interstate business consisting of selling harvesting machines and getting the money for them. This was one of the main purposes for which the company was incorporated. The suit was brought in connection with a transaction or series of transactions alleged to have occurred in Kentucky.

In *Philadelphia & Reading* v. *McKibbin*, 243 U. S. 264, suit was brought in New York to recover damages for personal injuries sustained by a citizen and resident of New York while employed by the defendant in one of its New Jersey freight yards and the summons was served on the defendant's president in New York. The defendant appeared and moved to quash service upon the ground that it was not doing business within New York. After the motion was overruled, the defendant again raised the jurisdictional question in its answer and insisted upon it at the trial. From a verdict for the plaintiff the case was taken to the Supreme Court on a writ of error.

In that case it appeared that other roads sold in New York coupon tickets good over defendant's line outside the state, and that the defendant's name appeared in the telephone directory and at various places on a ferry terminal. In reversing the judgment of the lower court, Mr. Justice Brandeis said (pp. 267-8):

> *"These signs on the terminal, this insertion in the telephone directory, and the information given in response to enquiries at the ticket office or over the*

telephone are all designed to facilitate and encourage travel and for the convenience of the public. * * *

The finding that the defendant was doing business within the State of New York is disproved by the facts thus established. The defendant transacts no business there; nor is any business transacted there on its behalf, except in the sale of coupon tickets. Obviously the sale by a local carrier of through tickets does not involve a doing of business within the state by each of the connecting carriers. If it did, nearly every railroad company in the country would be 'doing business' in every state. Even hiring an office, the employment by a foreign railroad of a 'district freight and passenger agent * * * to solicit and procure passengers and freight to be transported over the defendant's line,' and having under his direction 'several clerks and various traveling passenger and freight agents' was held not to constitute 'doing business within the state.' *Green* v. *Chicago, Burlington & Quincy Ry. Co.*, 205 U. S. 530." (Italics ours.)

In *People's Tobacco Company* v. *American Tobacco Company*, 246 U. S. 79, the question of service again was involved and among other things it was found by the District Court that at the time of the service, and thereafter, the American Tobacco Company was selling goods in Louisiana to jobbers, and sending its drummers into that state to solicit orders of the retail trade, to be turned over to the jobbers, the charges being made by the jobbers to the retailers.

In holding that the American Tobacco Company was not doing business in Louisiana, the court said:

"The question as to what constitutes the doing of business in such wise as to make the corporation subject to service of process has been frequently discussed in the opinions of this court, and we shall enter upon no amplification of what has been said. Each case depends upon its own facts. The general rule deducible from all our decisions is that the

> business must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the state or district where service is attempted. * * *
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> As to the continued practice of advertising its wares in Louisiana, and sending its soliciting agents into that state, as above detailed, the agents having no authority beyond solicitation, we think the previous decisions of this court have settled the law to be that such practices did not amount to that doing of business which subjects the corporation to the local jurisdiction for the purpose of service of process upon it. *Green* v. *Chicago, Burlington & Quincy Ry. Co.*, 205 U. S. 530; *Philadelphia & Reading Ry. Co.* v. *McKibben*, 243 U. S. 264, 268."

The court also took occasion to explain, limit and define its decision in the *International Harvester Company* case, saying on page 87:

> "The plaintiff in error relies upon *International Harvester Co.* v. *Kentucky*, 234 U. S. 579, but in that case the facts disclosed that there was not only a continuous course of business in the solicitation of orders within the state, but there was also authority upon the part of such agents to receive payment in money, checks and drafts on behalf of the company, and to take notes payable and collectible at banks in Kentucky; these things, taken together, we held amounted to doing business within the State of Kentucky in such manner as to make the Harvester Company amenable to the process of the courts of that state."

In *Toledo Railways, etc. Co.* v. *Hill*, 244 U. S. 49, suit was brought in the Supreme Court of New York to recover the principal and interest of certain bonds issued by the railway company, an Ohio corporation, engaged in the operation of street railways and furnishing electrical energy at Toledo. Service was made upon a director and vice president of the corporation, who resided in New York. A motion to vacate and set aside the serv-

ice was made on the ground that the company was not doing business in New York. After this motion was overruled an answer was filed, reasserting the challenge as to jurisdiction and setting up various defenses to the merits, and the case was taken by writ of error to the Supreme Court of the United States from an adverse judgment against the railway company. Judgment was entered in favor of plaintiff on the theory that the provision for the payment of the bonds and coupons at an office in the City of New York constituted doing business there. In reversing the judgment, the Court said, on page 53:

> "The mere provision for a place of payment in the City of New York of the bonds and the coupons annexed to them at their maturity and their payment at such place *was in no true sense the carrying on by the corporation in New York of the business which it was chartered to carry on*, however much it may have been an agreement by the corporation to pay in New York an obligation resulting from the carrying on by it of its business in the State of Ohio."

In the case of *Atchison, T. & S. F. Ry. Co.* v. *Weeks et al.* (C. C. A. 5th Circuit), 254 Fed. 513, the Santa Fe was held not to be doing business in Texas although it maintained a general manager with an office there, who directed the operation of the western lines of the Santa Fe outside of the State of Texas by letters and telegrams sent to them. He was also the chief operating officer of a Texas corporation.

A bill to restrain the enforcement of a judgment obtained in a state court, upon service made under the Texas statutes referred to in the *Peterson* case, *supra*, was sustained.

The decision is strongly expressed, and the following quotations therefrom are pertinent here:

> "The doing of business which is entirely incidental to the main business, especially if it be interstate in its character, will not evidence an intention of the corporation to subject itself to the local laws. This may extend even to the maintenance of offices within the state, and the employment of such clerical help as may be necessary, without having such effect. *Green* v. *C. B. & Q. Ry. Co.* 205 U. S. 530, 27 Sup. Ct. 595, 51 L. Ed. 916.
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> The employment and payment of clerks at Amarillo could have no effect not resulting from the employment and payment of officers. In the cases of *Green* v. *C. B. & Q. Ry. Co.* and *People's Tobacco Co.* v. *American Tobacco Co.* there were local employees and clerks hired and paid, and who worked within the state.
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> There are no facts evidencing an intention on the part of the railway company to subject itself to suit within the State of Texas on a cause of action arising outside the state, or with reference to any matter or thing other than the conduct of its offices at Amarillo. There is no fact evidencing an intention on the part of the railway company to transfer its citizenship and its corporate existence from the state of its incorporation to the State of Texas.
>
> The conclusion is reached that, where a corporation is not undertaking to do within the state any of those things which it is incorporated to do, the only business done within the state being by managers who give direction for the operation of the business of the corporation in other states, using only the necessary clerical force to that end, and utilizing the United States mails and interstate transportation in the conveyance of directions, the corporation is not to be regarded as doing that character of business which would be equivalent to the presence within the state of the corporation, and which would be the essential basis for a personal judgment against the corporation within the state for a tort committed in another state."

Petition for certiorari in this case was denied, 249 U. S. 602.

As we understand its decisions, the Supreme Court of Minnesota has practically conceded that the various foreign railroad corporations which have been sued were not doing business in such manner and to such extent as to give the court jurisdiction had it not been for the statute authorizing service on soliciting agents.

We desire to call the special attention of the court to the case of *Stephan* v. *Union Pacific Railway Company*, 275 Fed. 709, decided August, 1921, by Judge Booth of the District Court of the District of Minnesota, in which the court arrived at the conclusion that the Minnesota statute did not authorize service upon a soliciting agent.

In that case the motion to quash service was on the following grounds:

> "(1) That at the time of the pretended service of the summons and complaint herein the defendant was a foreign corporation and did not operate any railroad in the State of Minnesota, or have any lines of railroad whatsoever therein.
>
> (2) That E. W. Hawley, upon whom the pretended service of the summons and complaint herein was made, was not a ticket or freight agent of said defendant, but was engaged solely in soliciting freight and traffic for transportation in interstate commerce over the lines of said defendant, which are wholly without the State of Minensota.
>
> (3) That Chapter 218, Laws Minn. 1913, (G. S. 1913, Sec. 7735), under which the pretended service was made, is void, and is (a) in contravention of Article 1, Sec. 7, of the Constitution of the State of Minnesota; (b) in contravention of Article 1, Sec. 8, subd. 3, of the Constitution of the United States; (c) in contravention of Article 14, Sec. 1, Amendments to the Constitution of the United States."

In granting the motion the court said (pp. 711, 712):

"It appears from the record in the case at bar that the defendant railway company has no line of railway in the State of Minnesota, and operates no line therein; that the cause of action did not arise in the State of Minnesota. It appears, further, that Hawley, upon whom the alleged service was made, was a soliciting freight and passenger agent, having an office in the City of Minneapolis; that his duties were to solicit freight and passenger traffic over the lines of the defendant railway company, and as incidental to such solicitation that he quoted rates established by the Interstate Commerce Commission, and received directions for diverting shipments in transit, and transmitted such directions to officers outside of the state; that he collected no freight charges, issued no bills of lading, and issued no passenger tickets; that on request he procured passenger tickets involving transportation partly over the Union Pacific lines from local ticket offices, turning the money received from the prospective passenger over to the local ticket office issuing the ticket; that he was authorized to do no other business than such as mentioned above, and does no other business, and that the defendant transacts no other business in the state.

It appeared, further, that in the city directory of the City of Minneapolis appears the following advertisement:

> '*Union Pacific System.* Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon-Washington Railroad & Navigation Company, St. Joseph & Grand Island Railway Company—Traffic Dept. Gen. Agent's Office, 618 Met. Life Bldg. Tel. Main 9456.'

And that in the telephone directory of the City of Minneapolis appears the following advertisement:

> '*Union Pacific System.* General Agent—freight and passenger dept. 618 Met. Life. Bldg. Main 9456.'

And that in the time-tables issued by the defendant company appears the following advertisement:

> '*Representatives of the Traffic Department,*

> Minneapolis, Minnesota.—618 Met. Life Bldg., 135 So. Third St.—E. H. Hawley, General Agent. R. E. Drummy, Traveling Freight and Passenger Agent. Wm. H. Brennan, Traveling Freight and Passenger Agent.'

As stated by the Supreme Court, each case must stand upon its own facts. After consideration of all the facts disclosed by the record in the instant case, I have reached the conclusion that they are more nearly similar to the facts in *Green* v. *Railway Co., supra,* than to the facts disclosed in any of the other cases. As was said by the court in that case:

> 'The business shown in this case was in substance nothing more than that of solicitation.'

In my judgment the case is controlled by the decision in the Green Case. It may be urged that the case at bar should be distinguished from the Green Case by reason of the fact that a state statute is one of the elements in the present controversy, and that this element was absent in the Green Case. In my judgment this fact is not sufficient to distinguish it from the decision in that case. *West* v. *Railway Co.* (C. C.) 170 Fed. 349, 355.

Further, the Minnesota statute does not attempt to define 'doing business within the state,' but simply designates the agent upon whom service may be made. The question whether the corporation is 'doing business within the state' still remains to be determined in each case upon the facts therein appearing."

We think we have clearly shown that the statute can have no effect at all in the case of a railroad company unless it is doing business of such character and to such extent as to warrant the inference that it has subjected itself to the jurisdiction of the court. It is not until that fact appears that a statute providing for service of process on any named officer or agent can be of any effect, and the question whether or not the designated officer or agent actually resides in the state is of no consequence whatever.

That this is so likewise appears from the case of *St. Louis Southwestern Railway Company of Texas* v. *Alexander*, 227 U. S. 218, in which were considered various statutes regarding service therein referred to. But the court held that before the question of service could be considered the following question must be determined:

> "Was the corporation within the jurisdiction in which it is sued?"

The court also said (pp. 226, 227):

> "A long line of decisions in this court has established that in order to render a corporation amenable to service of process in a foreign jurisdiction it must appear that the corporation is transacting business in that district to such an extent as to subject it to the jurisdiction and laws thereof.
>
> * * * * *
>
> This court has decided each case of this character upon the facts brought before it and has laid down no all-embracing rule by which it may be determined what constitutes the doing of business by a foreign corporation in such manner as to subject it to a given jurisdiction. In a general way it may be said that the business must be such in character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the district in which it is served and in which it is bound to appear when a proper agent has been served with process."

III.

THE STATUTE AS CONSTRUED BY THE SUPREME COURT OF MINNESOTA ALSO VIOLATES THE FOURTEENTH AMENDMENT IN THAT IT AMOUNTS TO A DENIAL OF EQUAL PROTECTION OF THE LAWS.

As we understand the theory on which the service in this case was sustained it is that the ordinary foreign corporation, such as a mercantile or manufacturing com-

pany, can come into the state and solicit interstate commerce without being subject to suit at all because the United States Supreme Court has held that *soliciting* business does not constitute *doing* business and that the Fourteenth Amendment forbids starting suit by service on a solicitor; but that as to foreign railroad corporations, the statute in effect provides that *soliciting* business is *doing* business and a solicitor is a proper agent for the service of process, regardless of the Federal Constitution.

We think the mere statement of such a theory shows clearly and conclusively its fallacy, but if that theory be assumed to be correct, then the law provides that foreign railroad corporations can only solicit interstate commerce on penalty of being sued generally, while other foreign corporations can solicit interstate commerce without being sued at all.

As we shall hereafter show, a state is not free to prevent foreign corporations from soliciting interstate commerce within its borders and any legislation concerning the same must be within limitations fixed by the Constitution of the United States, one of which is that "no state shall * * * deny any person within its jurisdiction the equal protection of the laws."

Of course, the legislature has the right to classify, but, as was said by this court in *Gulf R. R. Co.* v. *Ellis*, 165 U. S. 151, 159:

> "But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. No language is more worthy of frequent and thoughtful consideration than these words of Mr. Justice Matthews, speaking for this court in *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369: 'When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed

to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.' The first official action of this nation declared the foundation of government in these words: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.' While such declaration of principles may not have the force of organic law, or be made the basis of judicial decision as to the limits of right and duty, and while in all cases reference must be had to the organic law of the nation for such limits, yet the latter is but the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

The language of the court in *Direll* v. *Morris Heirs et al.* 89 Tenn. 500, 15 S. W. 87, also is appropriate:

"If the classification is made * * * for the purpose of subjecting a class to the burden of some special disability, duty or obligation, there must be some good and valid reason why that particular class should alone be subjected to the burden."

The foregoing cases are familiar and often cited, yet the reading of the fundamental rules therein laid down is always helpful in determining the question as to whether a statute affords the equal protection of the laws guaranteed by the Federal Constitution.

There are, of course, numerous cases holding that it is proper to pass laws relating to railroads solely when the railroads affected lie within the state enacting the law. But that is not the case here, and we are utterly unable to think of any distinction between inter-

state solicitation by foreign railroad corporations and interstate solicitation by foreign mercantile or manufacturing corporations. If it is desirable that a citizen of Kansas, having a grievance against a foreign railroad corporation on account of alleged neglect in the transportation of a Kansas intrastate shipment, can come to Minnesota and bring suit against the foreign railroad corporation by serving its soliciting agent in Minnesota, then why is it not also desirable that a dissatisfied Illinois customer of a Chicago mercantile or manufacturing corporation, which solicits interstate business in Minnesota, should be at liberty to bring suit in Minnesota and serve the Chicago company's solicitor?

Or, if it is of benefit to the state to have foreign railroad suits tried there, why would it not be of equal benefit to have foreign suits against other corporations tried in Minnesota?

We submit that no valid reason can be put forth in support of the position that the singling out of railroad corporations here attempted is either reasonable or just.

IV.

THE MINNESOTA STATUTE AS APPLIED TO THIS CASE IS VOID BECAUSE REPUGNANT TO THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION.

The law is well settled by a multitude of decisions that the state cannot impose any condition upon interstate commerce that materially or directly burdens that commerce. While, in a general way, a state may regulate or restrict the right of foreign corporations to engage in business within its limits, yet such power must be exercised within the limitations which the Constitution of the United States places upon state action.

In this connection the following language from *Sioux Remedy Co.* v. *Cope*, 235 U. S. 197, 203, is peculiarly appropriate:

> "One of these limitations is that before indicated arising from the commerce clause, whose operation, as this court has said, is such that a corporation authorized by the state of its creation to engage in interstate commerce 'may not be prevented by another state from coming into its limits for all the legitimate purposes of such commerce.' *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1, 27. We think that when a corporation goes into a state other than that of its origin to collect, according to the usual or prevailing methods, the purchase price of merchandise which it has lawfully sold therein in interstate commerce, it is there for a legitimate purpose of such commerce, and that the state cannot consistently with the limitation arising from the commerce clause, obstruct or hamper the attainment of that purpose. If it were otherwise, the purpose of the Constitution to secure and maintain the freedom of commerce by whomsoever conducted could be largely thwarted by the states and the commerce itself seriously crippled."

In that case, it appeared that an Iowa corporation, under a written contract made in South Dakota had sold to a resident of South Dakota certain merchandise for the sum of $80, and the action was brought in a court in South Dakota to recover the purchase price. The state court there held that because the Iowa corporation had not complied with the Foreign Corporation Act of South Dakota it could not maintain suit. In reversing the judgment this Court, after stating the provisions of the state statute, said (pages 204-5):

> "It will be perceived that these are the conditions upon which many of the states permit foreign corporations to engage in business within their limits when no constitutional limitation is involved, that is, when the character of the business is such that the state is free to exclude such corporations or to ad-

mit them upon terms acceptable to it. But here the conditions are sought to be applied in a different way and to a different situation falling within the reach of the commerce clause. Out of this arises the question of their validity. We think the mere statement of the conditions shows that they have no natural or reasonable relation to the right to sue which they are intended to restrict. They have no bearing upon the merits or any question of procedure or costs, are not directed against any abusive use of judicial process, and are plainly onerous. The second one, respecting the appointment of a resident agent upon whom process may be served, is particularly burdensome, because, as the Supreme Court of the state has said, it requires the corporation to subject itself to the jurisdiction of the courts of the state in general as a prerequisite to suing in any of them; that is to say, it withholds the right to sue even in a single instance until the corporation renders itself amenable to suit in all the courts of the state by whosoever chooses to sue it there. If one state can impose such a condition others can, and in that way corporations engaged in interstate commerce can be subjected to great embarrassment and serious hazards in the enforcement of contractual rights directly arising out of and connected with such commerce. As applied to such rights we think the conditions are unreasonable and burdensome, and therefore in conflict with the commerce clause."

One of the questions, therefore, presented by the case at bar is whether or not the requirement made by the Minnesota statute, as construed by its highest court, that a foreign railroad corporation, whose lines are without the state, cannot solicit interstate commerce in Minnesota without being subject to suit on a cause of action having nothing to do with the business solicited in Minnesota, arising wholly in Kansas and in favor of a Kansas corporation, is an interference with and a burden upon interstate commerce.

It is well known that large railroad systems like the Santa Fe have agents who solicit business in practically every state in the Union and the effect of holding that the Santa Fe soliciting agent could be served with process in this case, would be, to use the language of the court, in the case of *Philadelphia and Reading Railroad Co.* v. *McKibben, supra,*

> "nearly every railroad in the country would be 'doing business' in every state."

Plainly this would be a "manifest inconvenience and hardship." *Simon* v. *Southern Ry. Co.* 236 U. S. 115, 130.

What constitutes interstate as distinguished from local business is well illustrated in the case of *Cheney Brothers Co.* v. *Massachusetts,* 246 U. S. 147, in which the validity of an excise tax law of Massachusetts, as applied to the activities of Cheney Brothers Company, was considered. The court said on page 153:

> "This is a Connecticut corporation whose general business is manufacturing and selling silk fabrics. It maintains in Boston a selling office with one office salesman and four other salesmen who travel through New England. The salesmen solicit and take orders, subject to approval by the home office in Connecticut, and it ships directly to the purchasers. No stock of goods is kept in the Boston office, but only samples used in soliciting and taking orders. Copies and records of orders are retained, but no bookkeeping is done, and the office makes no collections. The salesmen and the office rent are paid directly from Connecticut and the other expenses of the office are paid from a small deposit kept in Boston for the purpose. No other business is done in the state.
>
> We do not perceive anything in this that can be regarded as a local business as distinguished from interstate commerce. The maintenance of the Boston office and the display therein of a supply of samples are in furtherance of the company's interstate

> business and have no other purpose. * * * Nor is the situation changed by inferring, as the state court did, that orders from customers in Connecticut sometimes are taken by salesmen connected with the Boston office and, after transmission to and approval by the home office, are filled by shipments from the company's mill in Connecticut to such customers. In such cases it doubtless is true that the resulting sale is local to Connecticut, but the action of the Boston office in receiving the order and transmitting it to the home office partakes more of the nature of interstate intercourse than of business local to Massachusetts and affords no basis for an excise tax in that state. *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 106-107."

This case also illustrates the well known fact that it is not railroad companies alone that solicit interstate commerce.

That the statute in question actually has imposed hardships and inconvenience on the Santa Fe, the defendant herein, is shown by the affidavit filed in this case (Trans., 8), which recites that after the opening of the office of the soliciting agent of the Santa Fe at Minneapolis in March, 1920, and prior to June 22, 1920, summons was served upon said soliciting agent in eleven suits involving forty-nine shipments, and by the fact that to try said cases it would be necessary for the employees and train crews of the Santa Fe to leave their employment and go to Minneapolis.

From such a number of suits brought against a single railroad within so short a time, the burden imposed upon foreign railroads generally by the statute in question may readily be inferred.

The question involved in this case is one of vast importance to railroads and all other corporations carrying on interstate solicitation because, if the statute is good as

applied to railroads, manifestly, a similar statute applicable to all foreign corporations also would be valid.

The situation is well summed up by the Supreme Court of Washington in *Royce* v. *C. & N. W. Ry. Co.* 156 Pac. 16, where the court said (page 17):

> "Considering the multitude of corporations and that, unlike individuals, they can be served through agents, all courts have shrunk from a rule which would soon swamp home tribunals with foreign brawls. Nor have we any desire through the same rule to expose our own incorporated merchants and carriers on like service to suits in every other state. Undoubtedly the universal opinion that solicitors for nonresident railroads and commercial houses are not agents for local service arises from these two apprehensions, and it was also seen to be unfair, as well as injurious to interstate commerce, to subject such principals to suits in our more than 40 states, while the plaintiffs in most cases would be exposed to suit only at home."

The Supreme Court of Minnesota in *Rishmiller* v. *D. & R. G. R. Co.* 134 Minn. 161, 159 N. W. 272, said with reference to a similar situation, but without referring to the effect of the commerce clause, which apparently was not called to its attention:

> "We may concede the undesirability of litigating such a cause as this so far from the place where it arose. It seems to us, however, that the question is not one of jurisdiction and that relief must be sought from the legislature, and not from the courts."

But a state legislature has no power to finally decide what is desirable or undesirable with respect to interstate commerce. That is a question for decision by this Court and the unlawful burden placed upon the solicitation of interstate commerce by the Minnesota statute clearly makes it unconstitutional.

Conclusion.

Under the Constitution of the United States and the authoritative decisions of this Court upon the point involved in this case, we respectfully submit that the judgment of the Supreme Court of Minnesota herein should be reversed.

Respectfully submitted,

Gardiner Lathrop,
Homer W. Davis,
Thomas F. Quinn,
Attorneys for Plaintiff in Error.

William T. Faricy,
Of Counsel.

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WM. R. STANS
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Supreme Court of the United States.

OCTOBER TERM, 1921.

NO. 270

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT, &c., PLAINTIFF IN ERROR,

vs.

FARMERS CO-OPERATIVE EQUITY COMPANY.

BRIEF OF DEFENDANT IN ERROR.

GEORGE H. LAMAR,
FREDERICK M. MINER,
WALTER W. PATTERSON,
Minneapolis, Minn.,
Attorneys for Defendant in Error.

Supreme Court of the United States.

OCTOBER TERM, 1921.

NO. 749.

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT, &c., PLAINTIFF IN ERROR,

vs.

FARMERS CO-OPERATIVE EQUITY COMPANY.

BRIEF OF DEFENDANT IN ERROR.

This brief is being prepared before the brief of plaintiff in error is filed, but as this case will be reached for argument earlier than expected, preparation of this brief cannot longer be delayed. To the extent we fail to correctly anticipate the arguments of the other side we shall supplement this brief on oral argument.

The salient facts in this case are few and it will be assumed that they will be fully and correctly set out in the statement of facts in the brief of plaintiff in error.

As the cause of action here arose during Federal control and as it appears from the special appearance made that service should be made in the manner prescribed in Section 206 (b) of the Transportation Act of 1920 (Rec. p. 5, fol. 9), which provides that process may be served upon such agent of the carrier as "is authorized by law to be served with process in proceedings brought against such carrier," the question

of the validity of the service of process should be decided just as if the cause of action did not arise during Federal control and the action were against the railroad company.

Carrier Was Present in Minnesota and Therefore By Legislative Enactment It Could Be Made Amenable to Service of Process in Minnesota.

If a corporation is present in a state, then, just as in the case of an individual present in a state, it can be made amenable to the service of process there. When a corporation is present in a state and upon what agent or representative service of process can be had, are matters that properly come within the legislative powers of the state, and the interpretation of the supreme court of the state of the state statute covering this subject is conclusive. The question of whether the service is valid is not limited to the question of whether what the corporation is doing in the state constitutes "doing business" under decisions which have passed upon the scope of this term where there was no such statute.

This is the distinction we would make between this case and the case of *Green v. Chicago, Burlington & Quincy Railway Co.*, 205 U. S. 530, 27 Sup. Ct. 595, assuming, for the moment, that the agent who was served here had no different or greater powers than those of the agent upon whom service was attempted to be made in that case. In that case this court stated that its decision did not overrule the case of *Denver and R. G. R. Co. v. Roller*, 100 Fed. 738, or *Tuchband v. Chicago & A. R. Co.*, (N. Y.), 22 N. E. 360, where there were statutes providing, as here, when service could be had on foreign railroad corporations and on what agents. In such cases this court said that validity of the service depended upon the interpretation of the state statute notwithstanding the fact that in each case the only business done by the carrier in the state

was by the agent served who merely solicited business. Even though this court held in the *Green case* that merely soliciting business is not "doing business," it is submitted that this court, in using the following language held that by statutory enactment as to when a corporation is present in a state service can be obtained on a foreign railroad which does nothing more than solicit business in the state:

> "It is obvious that the defendant was doing there a considerable business of a certain kind, although there was no carriage of freight or passengers."

This Court, in the case of *New York L. E. and W. R. Co. v. Estill*, 147 U. S. 591, 13 Sup. Ct. 444, upheld the decisions of the Supreme Court of Missouri holding that service, under a Missouri statute, is good when had on a foreign railroad corportation which has only an office in the state. In the case just cited this court said:

> "It has been held by the courts of Missouri that a non-resident corporation, which has a business office and an agent in the state, is amenable to the jurisdiction of its courts. *McNichol v. Reporting Agency*, 74 Mo. 457. In that case it was held that service of a summons upon a non-resident corporation, having an office or doing business in Missouri, in the manner provided by the fourth subdivision of section 3489, Rev. St. 1879, has the effect of personal service, and gives the court jurisdiction to enter a general judgment, and that the legislature had power to pass an act authorizing service of legal process upon any non-resident corporation having an office or doing business within the state, by leaving the same with an agent of the corporation within the state and authorizing the rendition of a general judgment upon such service.
>
> Said Section 3489 provides that a summons shall be executed, except as otherwise provided by law, in any one of the six different methods specified in the section, the fourth of which reads as follows: 'Or, fourth, where defendant is a corporation or joint-stock company organized under the laws of any other state or country, and having an office or doing business in this state, by delivering a copy of

> the writ and petition to any officer or agent of such corporation or company, in charge of any office or place of business, or if it have no office or place of business, then to any officer, agent, or employe in any county where such service may be obtained.'
>
> In the case cited the court held that the effect of the enactment, in 1879, of the fourth subdivision of Section 3489 was to make all foreign corporations having an office and doing business in Missouri, or an agent or employe there, suable in precisely the same manner as any other defendant, by the delivery of a copy of the writ and petition, and that it must be presumed that the legislature intended that the ordinary consequences should attend such service. See, also, *Insurance Co. v. French*, 18 How. 404; *Railroad Co. v. Harris*, 12 Wall. 65; *Pacific Co. v. Denton*, 146 U. S. 202, 207, 13 Sup. Ct. Rep. 44; *Gibbs v. Insurance Co.*, 63 N. Y. 114; 2 Mor. Corp. Sec. 977."

This court, in the case of *Connecticut Mut. Life Ins. Co. v. Spartley*, 172 U. S. 602, 19 Sup. Ct. 308, upheld the validity of a Tennessee statute providing that any corporation that had any transaction with persons or concerning any property situated in the state, through any agency whatever acting for it within the state, should be held to be "doing business" within the meaning of an act to subject foreign corporations to suit in that state.

The test to be applied as to when a corporation is present in a state is found in the following language in *International Harvester Co. v. Kentucky*, 234 U. S. 579, 34 Sup. Ct. 944, 58 L. ed. 1479:

> "The presence of a corporation within a state necessary to the service of process is shown when it appears that the corporation is there carrying on business in such sense as to manifest its presence within the state."

If, as held in the case of *Denver & R. G. R. Co. v. Roller*, 100 Fed. 738, the character of the agent served is such that it may fairly be said that he represents the corporation and a

soliciting freight and passenger agent is of sufficient representative character to make it reasonably certain that the corporation will be notified of service upon him, then it must follow that if the business of soliciting is carried on by him in the state in behalf of the corporation, the corporation, by virtue thereof, is then present in the state.

When a corporation comes into a state it is well settled that the state may impose such conditions as it sees fit upon such corporation and that if it is provided that such a corporation shall be amenable to service of process in such state on certain kinds of agents, then the corporation upon coming into such state through such agents and there being represented by such agents is presumed to have consented to such service of process on such agents, (*Lafayette Insurance Co. v. French,* 18 How. 404, 15 Sup. Ct. 451; *Commercial Mut. Acci. Co. v. Davis,* 213 U. S. 245, 29 Sup. Ct. 445).

Thus are successfully met here the two requirements laid down by this court in the *Alexander case* in the following language:

> "In this class of cases, where it is undertaken to hold a corporation personally liable in a foreign jurisdiction, two questions ordinarily arise: The first, Was the corporation within the jurisdiction in which it is sued? the second, Was process duly served upon an authorized agent of the corporation?"

The Supreme Court of Minnesota, in interpreting the process statute here providing that service may be had on a foreign corporation whose lines do not extend into the state by serving in the state an agent there engaged in the solicitation of freight and passenger traffic for such corporation, (General Statutes 1913, Section 7735, Subdiv. 3), has repeatedly held that a corporation so engaged in the solicitation of such

traffic through such an agent is present in the state and that service on him is valid.

See:

This case reported in the court below in 150 Minn. p. 574, 186 N. W. 130;

W. J. Armstrong v. New York Central & Hartford R. Co., 129 Minn. 104, 151 N. W. 917;

Lagergren v. Pennsylvania R. Co., 130 Minn. 35, 152 N. W. 1102;

Rishmiller v. Denver & R. G. R. Co., 134 Minn. 261, 159 N. W. 272;

Merchants Elev. Co. v. Chesapeake & O. Ry. Co., 147 Minn. 188, 179 N. W. 734;

Callaghan v. U. P. R. Co., 148 Minn. 182, 182 N. W. 1004.

In *Merchants Elev. Co. v. Chesapeake R. Co., supra*, the Minnesota Supreme Court interpreted this statute here in question as follows:

> "Our statute expressly provides that our Court may acquire jurisdiction over a foreign railway company having an agent in this state for the solicitation of freight or passenger traffic over its lines outside of this state by service on such agent. G. S. 1913, Sec. 7735."

This construction by the Minnesota Supreme Court, under the decisions of this court, should be accepted as final.

Even though such service may not be good in a Federal court, where the *Green case* was instituted, it does not follow that it is not good in a state court under a statute like the one in question. In *Mechanical Appliance Co. v. Castleman*, 215 U. S. at p. 442, the court quoted with approval from *Goldey v. The Morning News*, 156 U. S. 518, to the effect that while service of mesne process from a court of a state may be valid by the legislative acts and judicial decisions of that state, yet upon removal of the case to the federal court it may be held by the latter court that such service has no validity.

Inasmuch as the term "doing business" has never been given an all-inclusive definition and courts have reached different conclusions on the subject, it follows that a state legisla-

ture should have the power to say when a corporation is within the boundaries of the state, and that the only limitation upon such power is that the legislative enactment in regard thereto shall not offend the natural sense of justice. Such power, subject only to such limitation, was recognized by this court in the case of *Commercial Mut. Acci. Co. v. Davis,* 213 U. S. 245, 29 Sup. Ct. 445, wherein this court said:

> "It was competent for the state, keeping within lawful bounds, to designate the agent upon whom process might be served. * * * The law of the state may designate an agent upon whom service may be made, if he be one sustaining such relation to the company that the state may designate him for that purpose, exercising legislative power within the lawful bounds of due process of law. This was held in effect in *Connecticut Mut. L. Ins. Co. v. Spratley,* 172 U. S. 602, 43 L. ed. 569, 19 Sup. Ct. Rep. 308."

That a corporation may be present in the state even though it is not doing business in the sense that it is required to take out a license, is pointedly shown in the case of *Tauza v. Susquehana Coal Co.,* (N. Y.) 115 N. E. 915, where a corporation maintained an office in New York under the direction of a sales agent and solicited orders which were subject to confirmation by the home office in Pennsylvania. The court held that while it was not necessary for the corporation to take out a license to carry on such business in New York, it was nevertheless present in New York and subject to the jurisdiction of the courts of that state. The court said:

> "But activities insufficient to make out the transaction of business, within the meaning of those statutes, (license statutes) may yet be sufficient to bring the corporation within the state so as to render it amenable to process. * * * We are to say, not whether the business is such that the corporation may be prevented from being here, but whether its business is such that it is here. If in fact it is here, if it is here, not occasionally or casually, but with a fair measure of permanence, and

> continuity, then, whether its business is interstate or local, it is within the jurisdiction of our courts. *International Harvester Co. v. Kentucky, supra,* at page 587 of 234 U. S., 34 Sup. Ct. 944, 58 L. ed. 1479."

In the advancement and ramifications in the world of business and commerce when a corporation is present in a state is not necessarily determined by whether the corporation has physical property in the state. When a railroad corporation comes into a state through its agent to solicit shipments over its lines which do not run into such state and such agent is given a definite portion of such state—here the entire state as well as portions of several others—as his territory in such solicitation through an office established in such state, and is permanently located in such office and daily solicits such business, and as means for, and as an inducement to, having shipments routed over the line of such railroad gives information in regard to tariffs, quotes rates, traces shipments, issues in the state exchange bills of lading for the shipments solicited, and forwards to headquarters such claims as might be presented in regard to shipments so solicited, without the rendering of which service such business would likely not be procured, then it certainly cannot be said that it is opposed to natural sense of justice for the state to provide by legislative enactment that a corporation, under such circumstances and so engaged, is present in the state. Such conducting of business is laying claim to territory within the state for the purpose of increasing the traffic of the railroad and building up a good will for the corporation in such state for the purpose of still further increasing such traffic and consequently its revenue. The continuity of such operations conducted through an office established within the state for such purpose where the shipping public can go to find such agent and give him such business, distinguishes the case from one where an agent who has no office in the state comes into the state occasionally to solicit such business.

Under the circumstances as here made to appear the carrier was present in Minnesota just as truly as a tailoring corporation whose headquarters are in a foreign state is engaged in business in Minnesota by virtue of having a branch office in the state engaged in the solicitation of orders for clothes which are manufactured outside the state. In the case just supposed it will readily be admitted that the presence of the corporation in the state is not affected by the fact that the corporation carries no stock of merchandise within the state and none of the workmanship incident to filling the orders is done in the state. The solicitation of such orders, taking of measurements and quoting prices through such branch office are sufficient to constitute "doing business." The establishment of a regular trade in that manner creates a "good will" in the state which is an asset and which is retained only through the continued maintenance of the office.

CARRIER WAS ENGAGED IN DOING BUSINESS UNDER THE DECISIONS OF THIS COURT AND OTHER COURTS.

We have assumed that on the facts this case is no broader than the *Green case*. However it is to be noted that the agent upon whom service was had here handled the matter of claims in the same way and to the same extent as the agent did in the case of *St. Louis, Southwestern Ry. Co. v. Alexander*, 227 U. S. 218, 33 Sup. Ct. 245, in which the service was upheld.

For the facts we may look to the testimony of this agent who was called as a witness at the trial by the Director General, and whose testimony is uncontradicted, and we are not limited to the findings of fact made by the court.

In *Reynolds v. Missouri, K. & T. Ry. Co.*, (Mass.) 113 N. E. 413, which was affirmed by this court (41 Sup. Ct. 446), the court said:

> "Most of these facts have been found by the superior court judge, but as only one witness testified

> and apparently the trial judge did not distrust his testimony in any respect, we have treated his testimony as true and included in this statement a few facts not stated in supporting his conclusion. See *Lindsey v. Bird,* 193 Mass. 200, 79 N. E. 263; *Harvey-Watts Co. v. Worcester Umbrella Co.,* 193 Mass. 138, 78 N. E. 886."

On the matter of handling claims and in referring to himself in regard thereto, this witness, E. L. Jansen, testified as follows:

> "We endeavor to give him (the shipper whose business is solicited) the best service we can on claims and everything we can to satisfy him in the railroad end of his work" (Rec., p. 20, f. 38). "He (the shipper) makes the claim on the Santa Fe, and sometimes sends the claim direct to our people in Topeka or Chicago, and sometimes gives it to me. I transmit it to the proper people in Chicago or Topeka as the case may be." (Rec., p. 21, f. 40).

That the agent in the *Alexander case* handled claims in the same way is shown by the following excerpt from the opinion in regard to the way the agent in that case handled the claim there in controversy:

> "Replies were received to all such letters (sent by claimant in regard to claim) acknowledging receipt, and showing the attention and investigation which the claim was receiving, and stating that all claims were handled by the general offices at either St. Louis or Tyler, Texas, and that the letters were being sent to the St. Louis office of the Missouri company, and that it was hoped a satisfactory reply from the St. Louis office would be received at an early date. One letter was forwarded to S. C. Johnson, auditor of the Missouri Company, Freight Claim Division, and general adjuster of all freight claims of the Cotton Belt Route, who replied that he would review the matter and write fully regarding the company's position."

Solely upon the ground that the agent's connection with the claim as shown in the above quotation was sufficient to constitute "doing business" this court upheld the service and we submit that the same conclusion should be reached here, particularly in view of the fact that the agent here also solicited freight and passenger traffic, which the agent in the *Alexander case* did not do.

This case also comes within the case of *Missouri, K. & T. Ry. Co. v. Reynolds,* 41 Sup. Ct. 446. It appears from the facts in that case as set out in the opinion of the Supreme Court of Massachusetts (113 N. E. 412), that, when analyzed, there is no substantial difference between the services performed by the agent there and the services performed by the agent here. Several kinds of service performed by the agent in the Massachusetts case may be eliminated from consideration on account of having no controlling importance He reserved seats and berths in Pullman cars for the convenience of the patrons of the railroad just as the agent here traced shipments and bought tickets for the convenience of those he solicited (Rec., p. 18, f. 34, p. 20, ff. 38 and 39, p. 21, f. 40). The fact that in that case the agent sold tickets to which were attached coupons good over the railroad that was sued has been held in itself not sufficient to constitute "doing business." That the agent there received a percentage of the money realized from the business secured instead of a salary certainly cannot change the character of the business transacted. That there he was furnished with a frank for telegraphing on railroad business is of no more importance than the fact that the agent here took such steps as necessary, which undoubtedly included sending telegrams, in tracing shipments (Rec., p. 18, f. 35). There the fact that in a few instances he issued prepaid orders for the transportation of passengers beginning at some point on the defendant's railway system, to be exchanged for a ticket to be delivered at the points indicated, to be honored by the railway company, was no more effective or broader in scope in transacting the

business solicited than the issuance by the agent here of an exchange bill of lading upon which was authorized and could be secured the delivery to the railroad without anything more of the property therein described (Rec., p. 18, f. 35). There the agent did only a local business for the railroad and merely as a side issue in the carrying on of another business in an office which was maintained by him at his expense, while here the agent's office was maintained by the carrier and his territory for soliciting business included all of the state of Minnesota, and practically all of the states of Iowa and North and South Dakota, and part of Wisconsin (Rec., p. 17, f. 33). The fact that in the Massachusetts case the agent received money for the prepaid orders for transportation is not a distinguishing fact in that here, on account of there being a lien for freight charges, there was no occasion for the collection of any of the freight charges. The fact that the transportation business was obtained by the agent here just as well with, as without, collecting the freight charges, should not prevent what he did coming within the term "doing business" if identically the same thing, accompanied by the collection of freight charges, would constitute "doing business." Getting the business is the main thing and the matter of collecting the charges is purely clerical in view of the carrier's lien.

The decision of the state Supreme Court in the *Reynolds case* upholding the validity of service was based solely upon the finding of the trial court that the agent was engaged in soliciting business in the state, and therefore was engaged in business within the meaning of the state statute, which finding as quoted in the opinion, is as follows:

> "Marsters (the agent) is held out by the defendant railway as an agent for it at Boston and * * * is doing the acts which St. 1913, C. 257, contemplates as constituting an engaging in or soliciting business in this commonwealth by a foreign corporation. I therefore find said defendant is engaging in business within this commonwealth."

This case also comes within the case of *International Harvester Company v. Kentucky*, 234 U. S. 589, 34 Sup. Ct. 944, where orders for machines were solicited in Kentucky, subject to the approval of the defendant in another state. The gist of the opinion in that case is contained in the following sentence:

> "Here was a continuous course of business in the solicitation of orders which were sent to another state, and in response to which the machines of the Harvester Company were delivered within the state of Kentucky. This was a course of business, not a single transaction."

While it does not appear in this case that any specific shipments that were solicited came into the state, yet it fully appears from the testimony of the agent, who testified that his territory covered the entire state, that he was authorized to, and if occasion arose, would, solicit shipments that would come into the state and which would reach the state over the line of the Santa Fe, so that, in consequence, as a direct result of his solicitation, freight would come into the state just as it came into the state of Kentucky on the orders solicited in the *International Harvester Company case.*

The fact that in that case the agent had authority to accept money had no bearing upon the main part of his service, namely, procuring the orders for the machines, as the company clearly could not have escaped the decision it was "doing business" by arranging for collection through a bank or through the mails, for illustration. Certainly the mere collection of money has never been held in itself sufficient to constitute "doing business." Moreover, as heretofore pointed out, if the nature of the business solicited here did not give occasion for the collection of the freight charges on account of the carrier's lien insuring the collection of charges upon the shipments reaching destination, the soliciting of such business is none the less "doing business" because no money is collected by the agent.

In the case of *Interocean Forwarding Co. v. McCormick Co.*, 168 N. Y. S. 177, the court held that a corporation was present in the state and "doing business" there by maintaining an office there for an agent who merely solicited inquiries or offers for the corporation to pass upon in another state.

To the same effect:

Bogert & Hopper v. Wilder Mfg. Co., 189 N. Y. S. 444;

Cochrane Box & Mfg. Co. v. Monroe Binder Board Co., 188 N. Y. S. 697.

STATE STATUTE IS NOT UNCONSTITUTIONAL ON GROUND THAT IT IMPOSES A BURDEN ON INTERSTATE COMMERCE.

Once concede that a state may provide for service of process on a corporation that is present in the state, and we have shown that a state may so provide, the validity of such a statute is not affected by the fact that because of such statute a burden is placed on interstate commerce.

In the case of *International Harvester Co. v. Kentucky, supra*, this court said:

> "True, it has been held time and again that a state cannot burden interstate commerce or pass laws which amount to the regulation of such commerce; but this is a long way from holding that the ordinary process of the courts may not reach corporations carrying on business within the state which is wholly of an interstate commerce character. Such corporations are within the state, receiving the protection of its laws, and may, and often do, have large properties located within the state. In *Davis v. Cleveland, C. C. & St. L. R. Co.*, 217 U. S. 157, 54 L. ed. 708, 27 L. R. A. (N. S.) 23, 30 Sup. Ct. Rep. 463, 18 Ann. Cas. 907, this court held that cars engaged in interstate commerce and credits due for interstate transportation are not immune from seizure under the laws of the state regulating garnishment and attachment because of their connection with interstate commerce, and it was recognized that the states may pass laws enforcing the

> rights of citizens which affect interstate commerce, but fall short of regulating such commerce in the sense in which the Constitution gives sole jurisdiction to Congress." (Citing cases.)

See also *Tauza v. Susquehana Coal Co.,* (N. Y.) 115 N. E. 915.

The validity of such a statute does not depend upon the policy which the state adopts as to what extent it will entertain in its courts transitory actions where the causes of action have arisen in other jurisdictions. (*Chambers v. B. & O. R. Co.,* 207 U. S. 142, 28 Sup. Ct. 34). Nor is it a matter of controlling importance that the sustaining of such a statute might be an incentive for the institution of actions in Minnesota which, if it were not for such a statute, might be brought in the states where the causes of action arose and where such cases could possibly be defended more easily and at less expense by the railroads. The argument as to drawing litigation to Minnesota, which will doubtless be relied upon by paintiff in error, was more appropriately advanced in attacking the constitutionality of the Carmack amendment which imposes upon the initial carrier the burden of defending actions on claims arising while shipments are in the hands of connecting carriers and in states where the initial carrier does not operate at all, and yet that argument was held by this court to be unsound. It is far more important that shippers in Minnesota whose shipments are solicited by agents of such foreign lines should have the privilege of suing such lines in this state than that such lines should be put to the least possible expense of defending claims by compelling the shippers to sue in the states where the claims originate.

It follows that if under this statute service can be obtained on such foreign carriers by residents of Minnesota, no line can be drawn between residents and non-residents and that this statute makes such foreign carriers amenable to process in actions regardless of the residence of the plaintiff and where

the cause of action arose. It has been so held by the Minnesota Supreme Court (*Rishmiller v. Denver & R. G. R. Co.*, 134 Minn. 261, 159 N. W. 272.

It is respectfully submitted that the judgment of the lower court should be affirmed.

GEORGE H. LAMAR,
FREDERICK M. MINER,
WALTER W. PATTERSON,
Attorney for Defendant in Error.

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WM. R. STAN

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1922.

No. 270

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT UNDER TRANSPORTATION ACT, 1920,
Plaintiff in Error,

vs.

FARMERS' CO-OPERATIVE EQUITY COMPANY,
Defendant in Error.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

GARDINER LATHROP,
HOMER W. DAVIS,
THOMAS F. QUINN,
Attorneys for Plaintiff in Error.

WILLIAM T. FARICY,
Of Counsel.

GUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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Defendant in Error.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

(Italics throughout are ours.)

I.

MERE SOLICITATION OF BUSINESS IN A STATE BY A FOREIGN CORPORATION DOES NOT MAKE IT PRESENT TO SUCH AN EXTENT AS TO BE AMENABLE TO SERVICE OF PROCESS EVEN THOUGH A STATE STATUTE AS INTERPRETED BY THE SUPREME COURT OF THE STATE PROVIDES THAT SOLICITATION SHALL MAKE IT SUABLE THERE, AND THE FACT THAT THE JUDGMENT ON SUCH SERVICE IS OBTAINED IN A STATE INSTEAD OF A FEDERAL COURT IS OF NO IMPORTANCE.

On page 2 of the brief of the defendant in error the following language is used:

"When a corporation is present in a State and

> upon what agent or representative service of process can be had, are matters that properly come within the legislative powers of the State, and the interpretation of the Supreme Court of the State of the State statute covering this subject is conclusive. The question of whether the service is valid is not limited to the question of whether what the corporation is doing in the State constitutes 'doing business' under decisions which have passed upon the scope of this term where there was no such statute."

However, as we shall show, the statement is not supported by the decisions cited, and it is contrary to the rule laid down and repeatedly reaffirmed by this court.

A leading case on the subject is *St. Clair* v. *Cox*, 106 U. S. 350, where there was offered in evidence a certified copy of a judgment showing that service of process was made by delivering a copy to an agent of the foreign corporation, which was the defendant. The record was excluded, and in holding such action proper the court said:

> "Without considering whether authorizing service of a copy of a writ of attachment as a summons on some of the persons named in the statute—a member, for instance, of the foreign corporation, that is, a mere stockholder—is not a departure from the principle of natural justice mentioned in *Lafayette Ins. Co.* v. *French*, which forbids condemnation without citation, it is sufficient to observe that *we are of opinion that when service is made within the State upon an agent of a foreign corporation, it is essential, in order to support the jurisdiction of the court to render a personal judgment, that it should appear somewhere in the record—either in the application for the writ, or accompanying its service, or in the pleadings or the finding of the court—that the corporation was engaged in business in the State.*"

In *Pennoyer* v. *Neff*, 95 U. S. 714, the court considered the effect of a personal judgment obtained in the State of Oregon in strict accordance with state statutes but

without personal service on the defendant, service being had by publication only.

The court, after referring to several cases holding that if suit were thereafter brought on such a judgment no recovery could be had, said on page 732 *et seq.*:

> "In several of the cases, the decision has been accompanied with the observation that a personal judgment thus recovered has no binding force without the State in which it is rendered, implying that in such State it may be valid and binding. But if the Court has no jurisdiction over the person of the defendant by reason of his nonresidence, and, consequently, no authority to pass upon his personal rights and obligations; if the whole proceeding, without service upon him or his appearance, is *coram non judice* and void; if to hold a defendant bound by such a judgment is contrary to the first principles of justice—it is difficult to see how the judgment can legitimately have any force within the State. The language used can be justified only on the ground that there was no mode of directly reviewing such judgment or impeaching its validity within the State where rendered; and that, therefore, it could be called in question only when its enforcement was elsewhere attempted. In later cases, this language is repeated with less frequency than formerly, it beginning to be considered, as it always ought to have been, that *a judgment which can be treated in any State of this Union as contrary to the first principles of justice, and as an absolute nullity, because rendered without any jurisdiction of the tribunal over the party, is not entitled to any respect in the State where rendered.* * * *
>
> Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law."

The rule above laid down has been followed in a long

line of decisions. Thus, in *St. Louis S. W. Ry. Co.* v. *Alexander*, 227 U. S. 218, the court said on page 226:

> "The other question as to the presence of the corporation within the jurisdiction of the court in which it was sued raises more difficulty. A long line of decisions in this court has established that in order to render a corporation amenable to service of process in a foreign jurisdiction it must appear that the corporation is transacting business in that district to such an extent as to subject it to the jurisdiction and laws thereof. *The Lafayette Ins. Co.* v. *French*, 18 How. 404; *St. Clair* v. *Cox*, 106 U. S. 350; *Goldey* v. *Morning News*, 156 U. S. 518; *Conley* v. *Mathieson Alkali Works*, 190 U. S. 406; *Geer* v. *Mathieson Alkali Works*, 190 U. S. 428; *Peterson* v. *Chicago, Rock Island & Pac. Ry. Co.* 205 U. S. 364; *Green* v. *Chicago, Burlington & Quincy Ry. Co.* 205 U. S. 530; *Mechanical Appliance Co.* v. *Castleman*, 215 U. S. 437; *Herndon-Carter Co.* v. *Norris, Son & Co.* 224 U. S. 496."

The same rule was reiterated in *Peoples Tobacco Co.* v. *American Tobacco Co.* 246 U. S. 79.

And it was also asserted in *Chipman, Ltd.* v. *Jeffery Co.* 251 U. S. 373, where it was contended that an action could be maintained on a cause of action arising outside of the State of New York, under service made on an agent designated prior to that time for such purpose under the New York statute requiring the designation of an agent for the service of process as a condition precedent to doing business in that state, notwithstanding the fact that before the suit was brought the defendant had ceased to do business there, although it had not revoked the authority of its agent.

In holding the service invalid the court, out of deference to counsel, showed by its opinion that the courts of New York held that the statute was of no effect unless the company was doing business but expressly held that

that question was of federal cognizance notwithstanding the decision of the state court, saying:

> "*In resting the case on New York decisions we do not wish to be understood that the validity of such service as here involved would not be of federal cognizance whatever the decision of a state court, and refer to Pennoyer* v. *Neff*, 95 U. S. 714; *St. Louis Southwestern Ry. Co.* v. *Alexander, supra; Philadelphia & Reading Ry. Co.* v. *McKibbin*, 243 U. S. 264; *Meisukas* v. *Greenough Red Ash Coal Co.* 244 U. S. 54; *People's Tobacco Co.* v. *American Tobacco Co.* 246 U. S. 79."

In *Reynolds* v. *M. K. & T. Ry. Co.* 224 Mass. 379, 113 N. E. 413, where there was also involved a state statute, the Supreme Court of Massachusetts said:

> "The precise point to be decided is whether the defendant railway company was 'engaged in or soliciting business in this commonwealth' within the meaning of the pertinent statute. *The question involved is a federal one upon which the decisions of the United States Supreme Court are controlling.* That court has said that 'each case of this kind must depend on its own facts.' *Washington-Virginia Ry.* v. *Real Estate Trust*, 238 U. S. 185, 186, 35 Sup. Ct. 818 (59 L. Ed. 1262). That court has not undertaken to formulate any general rule defining what transactions are essential to the doing of business in the sense which will render the one conducting it liable to service of process. It has gone no further than to say that as to corporations:
>
> 'The business must be such in character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the district in which it is served.' *St. Louis Southwestern Ry.* v. *Alexander*, 227 U. S. 218, 227, 33 Sup. Ct. 245, 248 (57 L. Ed. 486, Ann. Cas. 1915B, 77)."

That case was affirmed by this court (255 U. S. 565), not on the strength of the state statute but under authority of the Alexander case, where the question of doing business was the only one considered.

The case of *New York L. E. & W. Railroad Co.* v. *Estill*, 147 U. S. 591, from which opposing counsel quoted at length on pages 3 and 4 of their brief, is not at all in point, but is in line with the other decisions of this court. The sentence next following the excerpt quoted by counsel for defendant in error reads as follows (608):

> "The principle applicable under such circumstances is that, if the corporation does business in the state, it will be presumed to have assented to the statute and will be bound accordingly."

From the above it clearly appears that a state statute of the character in question is without effect, particularly as to causes of action arising without the state, and if the company is not doing or has ceased to do business therein a suit cannot be maintained.

This court has not held, where writ of error has been prosecuted, that service and judgment would be valid in a state court under facts which would render the same void because of conflict with the Fourteenth Amendment and the Commerce Clause in a case originally brought in or removed to a federal court.

On page 6 of brief of defendant in error, the following statement is made:

> "Even though such service may not be good in a federal court, where the *Green case* was instituted, it does not follow that it is not good in a state court under a statute like the one in question. In *Mechanical Appliance Co.* v. *Castleman*, 215 U. S. at p. 442, the court quoted with approval from *Goldey* v. *The Morning News*, 156 U. S. 518, to the effect that while service of mesne process from a court of a state may be valid by the legislative acts and judicial decisions of that state, yet upon removal of the case to the federal court it may be held by the latter court that such service has no validity."

An examination of the decisions of this court on the question discloses that no such rule has been laid down. It is true that in *Green* v. *C. B. & Q. Ry. Co. supra* (205 U. S. 530, 533), the court said:

> "In support of his contention that the defendant was doing business within the district in such a sense that it was liable to service there, the plaintiff cites *Denver, &c., Railroad Co.* v. *Roller*, 100 Fed. Rep. 738, and *Tuchband* v. *Chicago, &c., Railroad*, 115 N. Y. 437. The facts in those cases were similar to those in the present case. But in both cases the action was brought in the state courts, and the question was of the interpretation of a state statute and the jurisdiction of the state courts."

It is to be noted that neither of those cases went to this court, and how foreign this observation of the court was to what was actually decided will appear from an examination of the decision itself, and the following comment upon it by the District Court in *West* v. *C. N. O. T. P. Ry. Co.* 170 Fed. 349, 355, is appropriate:

> "It is insisted that the qualifying expression in the foregoing extract as to *Denver & R. G. R. Co.* v. *Roller* and *Tuchband* v. *Chicago, etc., Railroad* to the effect that 'in both cases the action was brought in the state courts, and the question was the interpretation of the state statute and the jurisdiction of the state courts,' should be taken as a suggestion by the Supreme Court, at least, if not a direct holding, that the question of the sufficiency of the service was one to be controlled by state statutes and decisions. It could hardly be supposed that by a mere suggestion such as this the Supreme Court would reverse all its previous decisions on this subject. After having held in a number of cases that the Circuit Court will decide for itself as to the sufficiency of the service and as to whether the corporation was doing business in the state where sued, it would hardly in this way reverse all of its former rulings. *As a matter of fact the Tuchband case was a case in the state courts, and was never in the federal courts at all. In the Roller case the person*

served was a general agent in San Francisco of the defendant foreign corporation, and it would appear that both the Circuit Court and the Circuit Court of Appeals decided that he was such an agent and doing such business for the company in California as made it subject to suit in that state, and that the general agent was a person upon whom service could be properly perfected, and this decision was without reference to any ruling in the state court, but was made upon the facts there appearing as to the character of the agent and his business."

In *Goldey* v. *Morning News*, 156 U. S. 518, 522, this court said:

> "Service of mesne process from a court of a state, not made upon the defendant or his authorized agent within the state, although there made in some other manner recognized as valid by its legislative acts and judicial decisions, can be allowed no validity in the Circuit Court of the United States after the removal of the case into that court, pursuant to the acts of Congress, unless the defendant can be held, by virtue of a general appearance or otherwise, to have waived the defect in the service, and to have submitted himself to the jurisdiction of the court."

While this was a plain declaration that the federal courts would not be bound by the legislative acts and judicial decisions of a state in reference to service of process, it was not a statement that if a judgment on such service were secured in the state court and the action of the state court brought to this court for review, the judgment would be upheld on the strength of state statutes or decisions.

In the same case it is said (521):

> "So a judgment rendered in a court of one State, against a corporation neither incorporated nor doing business within the State, must be regarded as of no validity in the courts of another State, or of the United States, unless service of process was made in the first State upon an agent appointed to act there for the corporation, and not merely upon an officer

> or agent residing in another State, and only casually within the State, and not charged with any business of the corporation there."

If a judgment procured under such circumstances could not be enforced in the courts of another state because the defendant was not afforded due process of law, then how can it be enforced and held valid by this court when rendered in a state court and afterwards brought to this court for review as has been the case at bar? The various decisions of this court holding that when cases originally are brought in or are removed to a federal court, the court will not be bound by the state statutes or decisions upon the question of service of process, but will determine the question for itself, are equivalent to holding that the same question will be open to defendant when the case in a state court is brought to this court by proper appellate proceedings.

The right not to be sued unless doing business in a state or when such action would be contrary to the Commerce Clause or the Fourteenth Amendment is a substantive right arising under the Federal Constitution, which, of course, may be asserted alike in state or federal courts.

It is true that matters of procedure may differ in state and federal courts. For instance, there may be a state law under which the entry of a special appearance for the purpose of questioning jurisdiction may amount to a general appearance and preclude the defendant from thereafter questioning it in the state courts, but that rule would not be recognized in the federal court.

> *Mexican Central Railway* v. *Pinkney*, 149 U. S. 194.

It will be observed, however, that the statute upon this subject was held to be a mere matter of procedure

the enforcement of which did not violate the Due Process of Law Clause, whereas, this court has uniformly held that a judgment obtained against a corporation not present in the state deprived the defendant of property without due process of law.

In this connection it may be well to state that under Minnesota practice as in the federal courts the filing of a special appearance and motion to dismiss followed by an answer objecting to the jurisdiction of the court but going to the merits does not waive the jurisdictional question, but preserves the same for review upon appeal from final judgment.

State ex rel. v. *District Court*, 26 Minn. 233.

See, also, sections 389 and 482, Vol. I, Dunnell's Digest, and cases cited.

The unsoundness of plaintiff's position is strikingly shown by applying it to the following cases:

1. The case of an employee under the Federal Employers' Liability Act for damages of $5,000 for personal injuries, which, because of the provisions of that act, cannot be removed. Assume that in such case service is made under the Minnesota statute and that motion to set aside the same for want of jurisdiction, because the company was not doing business in Minnesota, is overruled solely because of the state statute, and after answer and trial a judgment for $5,000 is rendered; that under the state practice filing an answer and trying the case on the merits does not waive the jurisdictional point theretofore raised; that an appeal is taken to the state Supreme Court and upon affirmance, solely on the strength of the state statute, although the company was not "doing business" within the meaning of that term as defined by the federal courts, the case is brought to this court by writ of error.

2. The case of a passenger who is a citizen of some state other than that of the company and who brings suit in a state court of Minnesota for $5,000 damages for personal injuries. Assume that in that case service was made under the Minnesota statute; the case removed to the proper federal District Court; motion to quash there made on the same grounds as in the employee case and sustained, notwithstanding the state statute, and that ruling brought to this court for review at the same time as the employee case.

Under such circumstances, which are not at all improbable, if plaintiff's contention were held to be correct, then this Court would be bound to affirm both cases, thus holding that a foreign corporation could be sued in Minnesota and a valid judgment rendered in a case which could not be removed to the federal courts, but that, under the same facts as to doing business, such corporation could not be sued in a case which could be and was removed to the federal court. Beyond a doubt, this Court has been moved by such considerations to hold that a substantive right, to wit, the right of a foreign corporation not to be sued in a State unless doing business there, is one of federal cognizance, which must be decided in any court, where properly called in question, by applying to the facts the rules prescribed and laid down by this Court and not a rule laid down by a state statute.

The question of whether the judgment and statute in question are void, because in conflict with the Commerce Clause and the Fourteenth Amendment, is in nowise affected by the Minnesota statute or by the fact that the action was brought in and judgment rendered by a state court of Minnesota instead of a federal court.

II.

THE SPECIAL FINDING MADE BY THE TRIAL COURT THAT THE SANTA FE WAS ENGAGED ONLY IN THE SOLICITATION OF INTERSTATE FREIGHT AND PASSENGER TRAFFIC CANNOT BE QUESTIONED HERE FOR THE FIRST TIME.

As pointed out on page 15 of our main Brief, the evidence showed and the trial court found that the only business done by the Santa Fe in Minnesota was "soliciting and obtaining interstate freight and passenger traffic" (Trans., 26, fol. 49), and the Supreme Court of Minnesota said in its opinion (Trans., 32):

> "The railway company neither owns nor operates any line of railway in this state, but maintains in this state an agent for the solicitation of freight and passenger traffic over its lines outside of this state. It does no business in this state except to maintain such resident agent and solicit such traffic."

Notwithstanding the fact that the findings of the trial court were not attacked in any way in the state Supreme Court, and although the state Supreme Court held the facts showed the business done in Minnesota by the Santa Fe amounted only to solicitation, and but for the state statute the case was the same as that of *Green* v. *C. B. & Q.* 205 U. S. 530, yet opposing counsel have quoted various excerpts of testimony from the record and argued that they show that the Santa Fe was "doing business" and was present in the state, as was the railroad company in the case of *St. L. S. W. Ry. Co.* v. *Alexander*, 227 U. S. 218, so as to be subject to suit, regardless of the effect of the statute on the strength of which the judgment was entered and affirmed below.

It is true that this Court said in *Philadelphia & Reading Railway Company* v. *McKibben*, 243 U. S. 264, 265:

> "Whether the corporation was doing business

within the state and whether the person served was an authorized agent are questions vital to the jurisdiction of the court. A decision of the lower court on either question if duly challenged is subject to review in this court; and the review extends to findings of fact as well as to conclusions of law. *Herndon-Carter Co.* v. *Norris, Son & Co.* 224 U. S. 496; *Wetmore* v. *Rymer*, 169 U. S. 115."

But it will be noted in that case that the lower court found the carrier was doing business and that was the finding of facts which was challenged by the losing party.

In both of the cases cited by the court in the *McKibben* case, *supra*, the court had quashed the service and dismissed the actions.

Its action in so doing was challenged on review, which made it necessary for the court to examine the testimony.

Where a cause is tried by the court and facts are specially found, the Minnesota Supreme Court follows the general rule that, unless the findings are questioned or appealed from, they cannot be attacked or enlarged by reference to the testimony, the appellate court being confined in its review to the facts so found.

Jordan v. *Secombe*, 3 Minn. 220; 22 N. W. 383.
Kinney v. *Mathias*, 81 Minn. 64; 83 N. W. 497.
Smith v. *Kipp*, 49 Minn. 119; 51 N. W. 656.
Williams v. *Schembri*, 44 Minn. 250; 46 N. W. 403.
Miller v. *Chatterton*, 46 Minn. 338; 48 N. W. 1109.
Prosser v. *Manley*, 122 Minn. 488; 142 N. W. 876.
Mannheimer Brothers v. *The Kansas Casualty & Surety Co.* 147 Minn. 350; 180 N. W. 229.
Pittsburgh Plate Glass Company v. *Brown*, ... Minn. .....; 188 N. W. 569.

See, also:

Corpus Juris, Appeal & Error, 4 C. J. 2548.

We do not think that the defendant in error is in any position to question the findings heretofore made, but even if they be reviewed it plainly appears that there is nothing in the entire evidence in the case which would justify affirmance of the judgment on the strength of the *Alexander* case, as we shall now proceed to show.

III.

THE SANTA FE WAS NOT ENGAGED IN DOING BUSINESS UNDER THE FACTS DISCLOSED BY THE RECORD AND THE DECISIONS OF THIS COURT CITED BY OPPOSING COUNSEL IN SUPPORT OF THAT BRANCH OF THEIR ARGUMENT.

Opposing counsel contend that because the soliciting agent in this case stated that he sometimes forwarded claims to the proper "people" in Chicago or Topeka, and procured information from the proper officials of the Santa Fe as to the location of shipments on its lines, and quoted rates from tariffs on file with the Interstate Commerce Commission, and forwarded to proper officials for attention diversion orders, the *Green* case and other cases cited in our opening brief have no bearing on the decision of the question here involved.

If the evidence in this regard is to be considered by this court, in face of the specific finding of the court below that the only business done by the Santa Fe agent was to solicit traffic, such evidence would not establish the doing of business by the railway company so as to make it suable in Minnesota.

Defendant in error does not and could not contend that the evidence showed the claim on which this suit was brought was forwarded by Jansen to proper Santa Fe officials for attention; much less, that it was only after

negotiations for the settlement thereof through Jansen had failed, that suit was brought and process was served on him. That was what happened in the *Alexander* case.

Furthermore, it would be difficult, indeed, to solicit business successfully unless a solicitor would be courteous enough, when requested, to forward claims to the proper claim department official for attention. A solicitor in any line of business must and, commonly, does do this, regardless of whether he is endeavoring to get business for a railroad company or a lumber company, a tobacco company or a clothing or grocery company.

In so far as furnishing information as to rates contained in tariffs is concerned, that, of course, is something which everyone is presumed to know. *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639.

The fact remains, however, that tariffs are somewhat complicated and it would be a harsh rule, indeed, which would hold that to assist a shipper in ascertaining a lawful rate could only be done at the hazard or upon the condition that the company subject itself to suit in Minnesota.

Certainly, a solicitor in any line of business must know and inform his customer how much the latter will have to pay for a given service or for any goods he is selling. A salesman who could not do this would not be able to secure any business for his company.

With respect to furnishing information to shippers as to the location of their shipments, that, by no stretch of the imagination, could constitute doing business.

When diversion orders are given it is the common practice also to surrender the original bill of lading and receive in exchange a bill of lading, which by its terms is not effective until the freight reaches the Santa Fe.

The issuance of such bills of lading was held in the *Green* case not to be "doing business" and, consequently, the mere forwarding of diversion orders without issuing exchange bills of lading could not under any possible theory be held to be "doing business."

In reference to diversion, the Commission said in *Central Commercial Co.* v. *L. & N. R. R. Co.* 27 I. C. C. 114, 115:

> "Diversion and reconsignment are required in the conduct of modern business and are to be regarded as commercial necessities."

And in *Charles Becker* v. *P. M. R. R. Co.* 28 I. C. C. 645, 651, the following language is used:

> "The primary advantages are found in the increase in the fluidity and regularity of the movement of commodities, the important elimination of economic waste in the reduction of the handling of goods between the producer and the consumer, the increase in celerity of movement, and the facilitation of the direction of commodities to the point of most active demand."

On large railroad systems like the Santa Fe, a number of different agents are located at various points with authority to execute diversion orders. To forward a diversion order to the proper agent in each case requires a knowledge of the location of the shipment and, also, a specific knowledge of Santa Fe officials and movement of traffic over its railroad. Such knowledge is possessed by a soliciting agent and when diversion orders or requests are given to him for forwarding to the proper official for execution, the result is that mistakes are obviated, delays avoided and the diversion facilitated.

In the *McKibben* case, *supra*, it appeared that the railroad company's name was inserted in the telephone directory and appeared at various points on the terminal. Commenting on this, the court said (p. 267):

> "These signs on the terminal, this insertion in the telephone directory, and the information given in response to enquiries at the ticket office or over the telephone *are all designed to facilitate and encourage travel and for the convenience of the public.*"

That language aptly characterizes Jansen's activities. The fact that he performs such services, doubtless, increases Santa Fe traffic, but for none of them does the company receive any direct payment and their convenience to the shipping and traveling public is apparent. During federal control soliciting agents were withdrawn and shippers were forced to place their diversion orders and obtain their information through some railroad operating official. This caused great complaint and at the expiration of federal control, as appears by this record, railroads restored the former service, and at the present time, in all large cities, shippers and passengers may obtain such information and service from soliciting agents of practically all railroads in the country. Each possesses information as to his particular road, which it would not be possible for agents of railroads running into that city to have because, naturally, the agent of one railroad could not be fully informed as to all other railroads in the United States.

In the *Green* case, after detailing the matters done and performed by the railroad agent who was served, and by the various clerks and traveling passenger and freight agents who worked out of his office, the court said:

> "It is obvious that the defendant was doing there a considerable business of a certain kind, although there was no carriage of freight or passengers."

It is also obvious that the Santa Fe was at the time of service of the writ herein doing a considerable business in Minnesota, but we earnestly contend it was do-

ing no more there than is commonly done by solicitors for railroad companies everywhere, and by salesmen and drummers for other corporations, who solicit interstate commerce in foreign states. If a salesman for any company goes to a regular customer and the customer has a claim which he wants transmitted to the proper department, naturally, the salesman would do it. If the goods the customer has ordered are not received, he gets in touch with the salesman for the purpose of finding out what is the matter. If he wants to countermand or change his order, he also takes that up with the salesman.

All of these things are merely incidental to the main business of solicitation and occupy a comparatively small portion of a salesman's time. But they are so closely connected with the business of solicitation as to be a part of it, and so are the incidental things performed by Jansen, as shown by the record in this case.

The solicitor or salesman has no authority to bind his principal in respect of these collateral matters or to act on them, and he simply transmits them to the proper official outside the state, who is authorized and empowered to take such action as may be proper in any particular case.

To hold that the facts disclosed by this case amount to doing business would be to hold that every railroad company and every other foreign corporation maintaining soliciting offices in other states was doing business therein, because if they did less it would be absolutely impossible for them to compete with domestic concerns represented by salesmen who were not so limited in matters about which they could safely talk with customers or write to their principals.

Cases cited by defendant in error are not authorities for holding on this record that the Santa Fe was doing business in Minnesota.

Defendant in error lays great stress on the *Alexander* case and strenuously insists that this case is governed by it.

But as we have already pointed out, the court there found that the agent on whom process was served was engaged in negotiating the settlement of claims and that it was not until his attempted negotiation of settlement of the particular claim on which suit was brought fell through that he was served with process.

The facts in the *Alexander* case have, therefore, no application to the case at bar.

Great reliance also seems to be placed on the case of *M. K. & T. Ry. Co.* v. *Reynolds*, 255 U. S. 565, affirming the decision of the Supreme Judicial Court of Massachusetts, 224 Mass. 379, 113 N. E. 413.

But a reference to that case shows that it is dissimilar and not controlling. The court seems to have concluded from the fact that because he was paid a commission on all tickets sold by agents of other railroads, not only in Massachusetts but in all New England, and because agents for such roads constantly kept in touch with him, he was to some extent managing and directing such sales.

The agent in that case also collected money and transmitted the same to the company.

Collecting money on behalf of the company was the principal thing which led the court to hold the defendant was doing business in the case of *International Harvester Co.* v. *Kentucky*, 234 U. S. 579, which case is also relied upon by opposing counsel.

That this is true appears from an examination of the case itself and also from the comment made thereon in *People's Tobacco Company* v. *American Tobacco Company*, 246 U. S. 79, where the Court on page 87 says:

> "The plaintiff in error relies upon *International Harvester Co.* v. *Kentucky*, 234 U. S. 579, but in that case the facts disclosed that there was not only a continuous course of business in the solicitation of orders within the state, but there was also authority upon the part of such agents to receive payment in money, checks and drafts on behalf of the company, and to take notes payable and collectible at banks in Kentucky; these things, taken together, we held amounted to doing business within the State of Kentucky in such manner as to make the Harvester Company amenable to the process of the courts of that state."

A memorandum decision of this court much more in point than the *Reynolds* case is *Enterprise Railway Equipment Co.* v. *Norfolk & Western Ry. Co.* 245 U. S. 631.

An examination of the record in that case discloses that the Railway Company maintained at its Chicago office a general western freight agent, and a passenger agent; that claims were received, investigated and referred to the home office; that freight was traced for shippers; that checks payable to the Railway Company were received and transmitted to it, while checks made by it in favor of others were delivered by solicitors to the payees, and the employees at the Chicago office also collected undercharges on behalf of the company. The court, however, on the strength of the *Green* case, held all these incidental activities to be solicitation.

In *New York, L. E. & W. Railroad Co.* v. *Estill*, 147 U. S. 591, there was no contention made by the defendant that it was not doing business in Missouri; in fact,

the defendant claimed it was doing business in such manner there as to be a resident of the City of St. Louis, so that under the Missouri statute it was suable only at St. Louis and not in the Circuit Court of Saline County.

We have not commented on the state court cases cited by plaintiff, which have not been reviewed by this Court, because they are not authorities which would influence this Court in connection with the question it has decided in the *Peterson, Green, People's Tobacco Company* and *McKibben* cases.

Some reference is also made to certain insurance cases, such as *Commercial Mut. Acci. Co.* v. *Davis*, 213 U. S. 245, *Pennsylvania Lumbermen's Mut. Fire Insurance Co.* v. *Meyer*, 197 U. S. 407, *Connecticut Mut. Life Ins. Co.* v. *Spratley*, 172 U. S. 602.

In all those cases, the insurance company was doing within the state the business it was primarily organized and chartered to perform. The insurance companies were writing insurance on the lives and property of residents of those states. They were doing in those states all that they could do anywhere.

There were certain statutes providing for service of process in various manners. The statutes were valid because the companies were doing business in the state. If they had not done business there or were not doing business there at the time the suit was instituted, a different result would have been obtained.

While in the insurance business the company, ordinarily, does nothing unless a loss is sustained and claim made, for the handling of claims is one of the principal parts of its business, yet with a railroad company the situation is entirely different and the handling of claims is a mere incident to its main business. The fact, therefore, that a soliciting agent merely forwards some such

claims to the proper officer for attention, certainly, ought not to be held to constitute doing business within the state.

Furthermore, as shown by our main brief and by the record, the business solicited by Jansen was wholly interstate, and that brings us to the next point to which reply is necessary and that is the contention of defendant in error that the transaction of interstate business may be burdened by a statute requiring it to submit to suits on causes of action not arising in, or out of business transacted within the state, because in our view the contention is not tenable.

IV.

NEITHER IN THE INTERNATIONAL HARVESTER CASE NOR IN ANY OTHER CASE HAS THIS COURT HELD THAT A FOREIGN CORPORATION, TRANSACTING, WITHOUT LEAVE OR LICENSE FROM OR EXPRESS AGREEMENT WITH A STATE, A PURELY INTERSTATE BUSINESS WITHIN ITS BORDERS, COULD BE SUED THERE ON A CAUSE OF ACTION NOT ARISING IN OR OUT OF BUSINESS TRANSACTED IN SAID STATE.

While it is probably true that a state can prevent the transaction by a foreign corporation of other than interstate business within its boundaries, except upon condition that it submit itself to the jurisdiction of the courts of that state in suits brought on causes of action arising elsewhere, yet there are no cases holding that where a corporation is doing within the boundaries of a state the business which it is primarily chartered and organized to perform, provided that business be wholly an interstate business, it may be compelled against its will to subject itself to the jurisdiction of the courts in cases based on causes of action arising outside the

state and in no way involving business transacted therein. No such facts were involved in any cases decided by this Court. In our opening brief we conceded that in any state through which a railroad passes it may, local statutes permitting, be sued generally. This is true for the reason that in states through which railroads run they do also an intrastate business, and, furthermore, authority from the state is necessary before they can build and operate a railroad within the confines thereof.

Thus, in *Railroad Company* v. *Harris*, 12 Wall. 65, the Baltimore and Ohio Railroad Company, a Maryland corporation, under authority of an Act of Congress, had extended its railroad into the District of Columbia. Suit was brought by a passenger, who had purchased a ticket from the defendant's agent at the City of Washington for Belair, Ohio, to recover damages for personal injury sustained in the State of Maryland.

The corporation contended that it could not be sued in the District of Columbia, but the court, quite properly, held otherwise, and it will be observed that the cause of action arose out of business transacted in the District of Columbia where the ticket under which plaintiff became a passenger was purchased and at which point the passenger boarded the defendant's train.

In *Barrow Steamship Company* v. *Kane*, 170 U. S. 100, a citizen of New Jersey brought suit in the United States Circuit Court for the Southern District of New York against an alien steamship company, which ran a line of steamships between Londonderry and New York, having an office and doing business at the latter port. The action was to recover damages for personal injuries sustained by the plaintiff while boarding the ship at Londonderry.

It seems that an action could not be brought in the

state courts of New York by a nonresident to recover damages for personal injuries incurred outside the state.

In that case, this court held that the United States Circuit Court had jurisdiction because the alien corporation would wholly escape from answering for its default to a citizen of the United States unless jurisdiction was taken.

In the case at bar, however, the cause of action did not accrue outside of the United States, nor are the status or rights of an alien corporation in any way involved.

As shown by our opening brief, this Court has recognized the difficulties and burdens in connection with suits against corporations at points remote from the places where they do business and from the place where the causes of action arose.

> *Sioux Remedy Co.* v. *Cope*, 235 U. S. 197, 203.
> *Simon* v. *Southern Railway Co.* 236 U. S. 115, 130.

See, also:

> *International Textbook Co.* v. *Pigg*, 217 U. S. 91.

In the last cited case the Court said on page 111:

> "This court held in *Chambers* v. *Baltimore & Ohio Railroad Co.* 207 U. S. 142, 148, that a state may, *subject to the restrictions of the Federal Constitution*, 'determine the limits of the jurisdiction of its courts, and the character of the controversies which shall be heard in them.' "

But unless the Minnesota statute, both as to jurisdiction and character of controversies, conforms to the restrictions of the Federal Constitution, manifestly it must fall.

In *Mitchell Furniture Company* v. *Seldon Breck Company*, 257 U. S. 213, and in *Missouri Pacific Railroad Company* v. *Clarendon Co. supra* (257 U. S. 533), this court recently held that "*where possible*" it would exclude causes of action not arising out of business transacted by foreign corporations in a state from the operation of statutes requiring them to submit to suit as a condition of permitting them to do other than interstate business.

In this case it is *possible* for this court to construe the Minnesota statute as not applicable to suits on causes of action not arising in the business done in Minnesota, when such suit is against a railroad corporation having no line of railroad in Minnesota and doing no business therein except an interstate business. And this Court further has power to strike down a construction of the Supreme Court of Minnesota which is to the contrary.

The last two cases dealt with corporations which were transacting a purely local business in the state, which could only be done upon such conditions as the state saw fit to attach, but in this case where the business done was wholly interstate, the State of Minnesota could not lawfully attach the unreasonable and burdensome condition which its Supreme Court has read into the statute under attack.

This court, in the *International Harvester* case, used the following language:

> "True, it has been held time and again that a state cannot burden interstate commerce or pass laws which amount to the regulation of such commerce; but this is a long way from holding that the ordinary process of the court may not reach corporations carrying on business within the state which is wholly of an interstate commerce character. Such corporations are within the state, receiving the pro-

tection of its laws, and may, and often do, have large properties located within the state.

* * * * *

In *International Textbook Co.* v. *Pigg*, 217 U. S. 91, it was held that a law of Kansas which required the filing by a foreign corporation engaged in interstate commerce of a statement of its financial condition as a prerequisite of the right to do such business and which required a certificate from the Secretary of State showing that such statements had been filed as a condition precedent to the right of the corporation to maintain a suit in that state, was void. But that case did not hold, as we should be required to do to sustain the contention of the plaintiff in error in this case, that the fact that the corporation was carrying on interstate commerce business through duly authorized agents made it *exempt* from suit within the state by service upon such agents."

As above stated, however, that suit was in regard to a Kentucky transaction growing out of business there transacted, and the contention of plaintiff's counsel that because the business was interstate the company should be *exempt* from suit was wrong.

But the fact that a corporation, doing wholly interstate business, had property in a state which received the protection of its laws, would be no reason for holding that the company must be answerable in the courts of that state in suits on causes of action arising outside the state and not in any way connected with the business so transacted.

It would be contrary to justice to hold that a citizen of Kentucky who had there contracted with the Harvester Company to purchase a machine to be shipped into the state could not, in the event the Harvester Company refused to perform its contract, bring suit to recover damages without going to Illinois to do it. The reasoning

in the *Insurance* cases, where it was held that policies of insurance could not be written on the lives and properties of the citizens of a state without the company being sued in such state, on controversies arising out of such policies, would apply.

And if a citizen of Kentucky there contracted for the purchase of an agricultural machine to be delivered at some point outside of Kentucky, it might be argued that the agent with whom the contract was made in Kentucky ought to be held to be a proper agent for service of process in a suit arising out of the contract. However, in such a case, inasmuch as the contract was to be performed wholly outside of Kentucky and the witnesses would reside outside the state, it would appear that the rule should be that suit could not be begun in Kentucky.

But even if such a rule were laid down and suit permitted on contracts negotiated but not carried out in the state, that would only mean that the Santa Fe would be suable in Minnesota on shipments for which Jansen issued exchange bills of lading which by their terms take effect only when the shipment reaches the Santa Fe and the burden so imposed would not be great.

In the case at bar, however, the bill of lading introduced in evidence was issued at Isabel, Kansas, to a corporation of that state, and the suit is not maintainable on the theory that the bill of lading was issued or the shipment solicited in Minnesota.

But if a citizen of Kentucky or some nonresident of Kentucky while in Illinois, where the Harvester Company has its factory, should contract with the Harvester Company there for the delivery of machines within the State of Illinois, what possible reason would there be for holding that the nonresident or the Kentucky

citizen making such a contract was at liberty to go back to Kentucky and bring suit upon it?

Such a suit would be an unwarranted and unnecessary burden on the interstate commerce business of the Harvester Company, transacted partly in Kentucky, and there is no decision of this Court holding that a suit under such circumstances could be maintained.

V.

BURDEN ON INTERSTATE COMMERCE SHOWN BY PENDING LITIGATION AND PROPOSED LEGISLATION.

On page 35 of our opening brief, we called attention to the fact that within a very short space of time suits on forty-nine other freight shipments, involving movements over the Santa Fe, were brought in Minnesota.

On February 2, 1923, the Governor of Minnesota sent a message to the legislature of that state dealing with the effect of the statute in question, in which he pointed out that an examination of the calendars of the Minnesota courts in 67 of the 87 counties of the state disclosed that there are pending in those counties 1,028 personal injury cases in which damages aggregating nearly $26,000,000 are sought, all against foreign railroad corporations not operating within the State of Minnesota, and that in each of these cases the plaintiff is a nonresident of the state.

He also shows how the industry is conducted by a small number of lawyers who specialize in personal injury litigation and maintain a corps of traveling men who travel over the country and solicit this business for their principals.

The message of the Governor is printed in full as an

appendix to this brief, and while his main effort seems to be to point out to the legislature the burden so imposed on Minnesota taxpayers and litigants, the facts recited by him also strikingly show the burden imposed on interstate commerce and the solicitation of interstate traffic by agents of foreign lines of railroad within the State of Minnesota.

It will be noted also that the Governor urges upon the state the enactment of a law which will relieve the burden as to personal injury cases only.

A foreign corporation doing solely an interstate business is entitled to protection as to all classes of cases not arising in or out of business done in a state, and we are, therefore, asking this Court to give the complete relief which would not be afforded even if the bill in question should become a law before the case is decided by this Court.

We conceive it to be proper to call the message of the Governor to the attention of this Court for the reason that the constitutionality of a Minnesota statute is involved and in the determination of that question the general effect of the statute may properly be taken into consideration and the facts presented to the court in the same manner as that pursued in *Muller* v. *Oregon*, 208 U. S. 412, 420.

A state cannot require as a condition precedent to the maintenance of an off-line office for the solicitation of interstate railroad traffic that the corporation pay a license fee. *McCall v. California*, 136 U. S. 104; *N. & W. Ry. Co. v. Pennsylvania*, 136 U. S. 114.

But the rule is otherwise where other than interstate business is involved. *Pembina Mining Co. v. Pennsylvania*, 125 U. S. 181.

VI.

TO HOLD THAT A FOREIGN RAILROAD CORPORATION OWNING OR OPERATING NO RAILROAD IN MINNESOTA MAY SOLICIT INTERSTATE COMMERCE WITHOUT BEING EXPOSED TO SUIT ON CAUSES OF ACTION ARISING OUTSIDE THE STATE WOULD NOT BE IN CONFLICT WITH THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE FEDERAL CONSTITUTION.

The case of *Chambers* v. *B. & O. Company*, 207 U. S. 142, is cited by defendant in error on the proposition that no distinction between residents and nonresidents can constitutionally be made.

With this we agree, but there is no more reason for holding that a Minnesota citizen who made a contract in Kansas with the Santa Fe for transportation in Kansas should be permitted to sue for alleged breach in Minnesota than there is for holding that a Kansas resident making such a contract should be permitted to sue on it in Minnesota.

Of course, if a resident cannot bring suit against a foreign corporation transacting a wholly interstate business on a cause of action arising elsewhere, a nonresident could not claim it. That is settled by *Missouri Pacific R. R. Co.* v. *Clarendon Co.* 257 U. S. 533, 535, where the court said:

> "Under Section 2 of Article IV of the Federal Constitution, the citizens of each state are entitled to all privileges and immunities of citizens in the several states. This secures citizens of one state the right to resort to the courts of another, equally with the citizens of the latter state; but where the citizens of the latter state are not given a process for reaching foreign corporations, it is not apparent how noncitizens can claim it."

VII.

THE FACT THAT SHIPMENTS SOLICITED BY JANSEN MIGHT MOVE OVER OTHER ROADS INTO MINNESOTA WOULD NOT CONSTITUTE DOING BUSINESS BECAUSE IT WAS NOT THE PURPOSE OF THE CARMACK AMENDMENT TO EXTEND THE TERRITORIAL JURISDICTION OF THE COURTS.

Counsel for plaintiff in error, on page 15 of their brief, seek to liken this case to the *International Harvester* case, because shipments solicited might come into the State of Minnesota.

The reason harvesting machinery went into Kentucky was because the Harvester Company sent it there in response to orders received from Kentucky customers.

But Jansen's sole duty is to solicit business over the Santa Fe, which does not run into Minnesota. Neither he nor his employer would be interested in any part of the transportation after shipments left the line of the Santa Fe.

It is true that as to certain shipments originating on the Santa Fe, which ultimately might find their destination in Minnesota, the Santa Fe would be responsible for any loss, damage or injury to the shipment sustained either on its own lines or the lines running into Minnesota, but that would not affect in the slightest degree the question of whether or not the defendant was doing business in Minnesota.

This argument was advanced in the *Alexander* case, *supra* (227 U. S. 218), but the court said on page 227:

> "The provisions of the (Carmack) amendment had the effect of facilitating the remedy of the shipper by making the initial carrier responsible for the entire carriage, but the amendment was not intend-

> ed, as we view it, to make foreign corporations through connecting carriers liable to suit in a district where they were not carrying on business in the sense which has heretofore been held necessary to confer jurisdiction."

Clearly, the movement of shipments over other railroads into Minnesota has nothing to do with the question at all.

Conclusion.

It is established by the record that the business done by the Santa Fe in the State of Minnesota amounted to no more than solicitation. It also appears that only interstate freight and passenger traffic was solicited and that the cause of action in this suit did not arise in or out of any business transacted in Minnesota.

The statute as construed by the Minnesota courts and applied to this case, is, therefore, void, because in violation of the Fourteenth Amendment.

It is also void because in conflict with the Commerce Clause, for the reason that even when a foreign corporation is doing business within a state, provided the business it transacts is wholly interstate commerce, it cannot be compelled against its will to transact such business upon condition that it submit to suit on causes of action not arising in, or out of business transacted in said state. The fact that the Santa Fe was not "doing" but simply "soliciting" interstate business in Minnesota adds greatly to the reasons why such rule should be applied to this case.

The law is in no sense a reasonable regulation of the interstate commerce business transacted by foreign railroads in the state, nor has it any relation to such business. It is arbitrary and unreasonable and should be

struck down. Such action will remove an enormous burden now imposed upon the business of interstate solicitation, which is necessarily and properly carried on in Minnesota by railroads not running into said state, and will permit such solicitation to be carried on in a manner which will enable the solicitors for outside roads to compete with solicitors for Minnesota lines, which, beyond the borders of that state, are competitive with roads not running into Minnesota.

In addition to the above reasons, the statute is also void under the equal protection clause of the Fourteenth Amendment because the state cannot impose such a burden on interstate solicitation by outside railroad corporations without imposing the same burden on interstate solicitation by other classes of foreign corporations.

The judgment should be reversed.

Respectfully submitted,

GARDINER LATHROP,
HOMER W. DAVIS,
THOMAS F. QUINN,
Attorneys for Plaintiff in Error.

WILLIAM T. FARICY,
Of Counsel.

APPENDIX.

MESSAGE OF THE GOVERNOR OF MINNESOTA SENT TO THE LEGISLATURE OF THAT STATE, FEBRUARY 2, 1923.

A recent examination of the calendars of the district courts in sixty-seven of the eighty-seven counties of the state, disclosed that there are pending in those counties, 1,028 personal injury cases in which damages aggregating nearly twenty-six million dollars are sought, all of which arose outside of the State of Minnesota, are against foreign railroad corporations—common carriers, who do not operate within the State of Minnesota and in which the plaintiffs are nonresidents of the State of Minnesota. These cases were started by a small number of lawyers who specialize in personal injury litigation and maintain a corps of traveling men who travel over the country and solicit this class of cases for their principals. This industry is of comparatively recent origin—apparently taking its start from the decision of the Supreme Court of Minnesota in 1906, in the case of *Cummings* v. *Edwards-Wood Co.* 95th Minn. 118. The procedure originally resorted to was to start a case, and at the same time issue a garnishment summons against each railroad corporation operating within the State of Minnesota, for the purpose of catching and holding any credit traffic balance such corporation might be owing to the foreign corporation against which the suit was brought. This procedure, in the event that sufficient money was caught by the garnishment to warrant proceeding with the case, would result in giving jurisdiction to the extent of the amount of money so impounded. As there are about ten railroads operating within the state, the procedure was rather a cumbersome and expen-

sive one and sometimes results in disclosures showing that there were no credit balances, and the case would fail. To make the matter easier, the legislature was induced, and perhaps unwittingly, to enact Chapter 218 of the Laws of 1913, which appears as the proviso in subsection 3 of Section 7735. General Statutes of Minnesota, 1913, as follows:

> "Provided that any foreign corporation having an agent in this State for the solicitation of freight and passenger traffic, or either thereof, over the lines outside of this State, may be served with summons by delivering a copy thereof to such agent."

Since the enactment of Chapter 218, the procedure in the class of cases mentioned has been a very simple one. The Supreme Court has said, with reference to the application of both the attachment and garnishment statutes to cases of tort:

> "In *Davidson* v. *Owens, supra*, the court took note of the sweeping language of the statute and while doubting the advisability of permitting the use of the writ of attachment without restriction, squarely held that, although Minnesota stood alone in extending the process to actions in tort, such was the effect of the words 'in an action for the recovery of money.'
>
> That decision stood unchallenged for six years and then the legislature deliberately preserved the same general language with reference to the writ of attachment but withheld its use in certain specified actions, and at the same time struck out the limitation which up to that time had *restricted* the garnishment process and employed the general term 'any action.' There is no getting away from the intention of the lawmakers in making these changes. It was intended to open the door, in garnishment proceedings to all classes of actions, and to close it with reference to certain actions in attachment proceedings.
>
> Thus the matter has stood without change. Although the process may be subject to abuse, and although most of the other states may have declined to go so far, our lawmakers have spoken clearly,

this court has determined what was enacted and if a change is desired the proper tribunal for that purpose is the lawmaking body."

Cummings v. *Edwards-Wood Company*, 95 Minn. 118.

With reference to the use of the amendment made by Chapter 218 of 1913, the court has said:

"We may concede the undesirability of litigating such a case as this so far from the place where it arose. It seems to us, however, that the question is not one of jurisdiction and that relief must be sought from the legislature and not from the courts."

Rishmiller v. *Denver & R. G. Co.* 134th Minn. 261, 265.

A statute that would permit cases of the kind under discussion to be brought in the courts of this state by residents thereof, and at the same time prohibit non-residents of the state from making a similar use of our courts would violate Section 2 of Article IV of the Constitution of the United States, which provides that:

"The citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several States."

As to the effect of the above quoted provision, Mr. Justice Miller, in the Slaughter-House cases, 16 Wall. 77, said:

"The sole purpose of this constitutional provision was to declare to the several states, that whatever those rights, as you grant or establish them to your own citizens, or as you limit, or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction."

The leading case on the subject is *Chambers* v. *B. & O. R. Co.* 207 U. S. 142. In the latter case the court said:

"But, subject to the restrictions of the Federal

> Constitution, the State may determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them. The State policy decided whether and to what extent the State will entertain in its courts transitory actions, where causes of action have arisen in other jurisdictions. Different states have different policies, and the same state may have different policies at different times. But any policy the State may choose to adopt must operate in the same way on its own citizens and those of other states. The privileges which it affords to one class it must afford to the other. Any law by which privileges to bring actions in other courts are given to its own citizens and withheld from citizens of other states is void because in conflict with the supreme law of the land."

In *State* v. *District Court of Waseca County*, 126th Minn. 501, 505, our Supreme Court, after quoting the language last above, said:

> "If it were the policy of this State, evidenced by the decisions of its courts, or fixed by statute, to close its courts, both as to citizen plaintiffs and noncitizen plaintiffs against transitory causes of action for torts committed in other states, a refusal to entertain jurisdiction would not violate the Constitution. Such is not the policy of this State. If a citizen of our State has a cause of action for a tort committed against him in Iowa by the North Western Railway Co. the doors of our courts are not closed against him."

It is very clear from the foregoing that a statute prohibiting nonresidents from bringing actions in our courts for torts that occurred in other states must be made to apply equally to our own citizens.

Attached hereto, is a draft of a statute that conforms to this principle. Under the attached draft, no attempt is made to prevent either citizen, or noncitizen, of the state from bringing an action to recover damages for personal injuries founded upon negligence occurring anywhere in any state traversed by common carriers operat-

ing in this state, and upon which personal service of summons can be had within this state. The effect of the proposed draft is to prevent personal injury cases, occurring in California, Massachusetts, Florida and other states, on foreign railroads, not operating within the State of Minnesota from being brought in the courts of this state.

It is possible that a citizen of Minnesota may occasionally be injured on a railroad in foreign states, which railroad does not operate in Minnesota, but in actual practice it is rather a rare occurrence, and whatever inconvenience the Minnesota citizen would suffer in such an isolated case, is not at all to be compared to the inconvenience suffered by citizens of Minnesota having litigation in our courts and entitled to a speedy disposition thereof, nor is it to be compared to the intolerable tax burden imposed upon the taxpayers of the State of Minnesota by the wholesale importation into the State of Minnesota of thousands of these cases—literally swamping the courts of the state. As has been said by our Supreme Court in the Cummings case, 95th Minn. 118:

> "If a change is desired the proper tribunal for that purpose is the lawmaking body."

And, as repeated in *Rishmiller* v. *Denver & R. G. Co.* 134 Minn. 261, 265:

> "The relief must be sought from the legislature and not from the courts."

No one can advance a single sound argument in favor of trying in the courts of this state, at the expense of our taxpayers, cases of nonresidents against nonresident corporations seeking the recovery of damages for personal injuries occurring in the freight yards of San Francisco, New Orleans or Boston.

During the war, under the Railroad Administration Act the Director General of Railroads, McAdoo, issued an

order that put a stop to this practice during the existence of the Railroad Administration. Many years ago this practice had become so intolerable in the federal courts that Congress stepped in and put an end to it in these courts by providing in Section 51 of the Judicial Code that:

> "No civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant."

and by providing in Section 53 of the same Code that:

> "When a district contains more than one division every suit not of a local nature against a single defendant, must be brought in the division where he resides."

The only persons affected will be a small number of attorneys who make a specialty of personal injury litigation, and who keep traveling men on the road for the purpose of securing employment in cases of the class under discussion herein. The persons benefited are the taxpayers of the State of Minnesota, and Minnesota litigants who, when the suggested law becomes operative, will have an opportunity of having their litigation speedily determined in the courts of their own states, for the maintenance of which they are taxed.

I urge very earnestly that the legislation suggested be enacted at the earliest possible moment.

lescence.

DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT, ETC. *v.* FARMERS CO-OPERATIVE EQUITY COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

No. 270. Argued April 17, 18, 1923.—Decided May 21, 1923.

1. Solicitation of traffic by railroads in States remote from their lines is part of the business of interstate transportation. P. 315.
2. A state statute which provides that any foreign corporation having an agent in the State for the solicitation of freight and passenger traffic over lines outside the State may be served with summons by delivering a copy thereof to such agent, imposes an unreasonable burden on interstate commerce and is void under the

Commerce Clause, as applied to an action brought against a railroad company which neither owns nor operates a railroad within the State, by a plaintiff who does not and did not reside there, upon a cause of action which arose elsewhere out of a transaction entered into elsewhere. Laws Minnesota, 1913, c. 218. P. 315. *Missouri, Kansas & Texas Ry. Co.* v. *Reynolds*, 255 U. S. 565, and *St. Louis Southwestern Ry. Co.* v. *Alexander*, 227 U. S. 218, distinguished.

3. The Court notices judicially the large volume and importance of litigation against interstate carriers on personal injury and freight claims, and the heavy expense, and impairment of the carriers' efficiency, entailed when the litigation is in jurisdictions remote from where the cause of action arose—also that the burden imposed on such carriers by the Minnesota statute here involved (*supra*) is heavy, and that the resulting obstruction to interstate commerce must be serious. P. 315.

4. Avoidance of waste, in interstate transportation, as well as maintenance of service, has become a direct concern of the public. P. 317.

150 Minn. 534, reversed.

ERROR to a judgment of the Supreme Court of Minnesota affirming a judgment for damages for loss of grain shipped between two points in Kansas.

Mr. Gardiner Lathrop and *Mr. Homer W. Davis*, with whom *Mr. Thomas F. Quinn* and *Mr. William T. Faricy* were on the briefs, for plaintiff in error.

Mr. Morton Barrows, with whom *Mr. George H. Lamar*, *Mr. Frederick M. Miner* and *Mr. Walter W. Patterson* were on the brief, for defendant in error.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

A statute of Minnesota (Laws 1913, c. 218, p. 274; General Statutes, 1913, § 7735) provides that:

"Any foreign corporation having an agent in this state for the solicitation of freight and passenger traffic or either thereof over its lines outside of this state, may be served

with summons by delivering a copy thereof to such agent."

Whether this statute, as construed and applied, violates the Federal Constitution is the only question for decision.

The Atchison, Topeka & Santa Fe Railway Company is a Kansas corporation engaged in interstate transportation. It does not own or operate any railroad in Minnesota; but it maintains there an agent for solicitation of traffic. In April, 1920, suit was brought by another Kansas corporation in a court of Minnesota against the Director General of Railroads, as agent, on a cause of action arising under federal control. Service was made pursuant to the Minnesota statute.[1] The recovery sought was for loss of grain shipped under a bill of lading issued by the carrier in Kansas for transportation over its line from one point in that State to another. So far as appears the transaction was in no way connected with Minnesota or with the soliciting agency located there. Defendant appeared specially; claimed that, as to it, the statute authorizing service violated the due process and equal protection clauses of the Fourteenth Amendment, as well as the commerce clause; and moved to dismiss the suit for want of jurisdiction. The motion was denied. After appropriate proceeding, the trial court entered final judgment for plaintiff; its judgment was affirmed by the Supreme Court of Minnesota, 150 Minn. 534; and the case is here on writ of error under § 237 of the Judicial Code.

[1] The alleged cause of action having arisen during federal control, the action was brought pursuant to § 206(*a*) of Transportation Act 1920, February 28, 1920, c. 91, 41 Stat. 456, 461, against the Director General, as Agent. A contract had been made with the carrier for the conduct of litigation arising out of operation during federal control. Hence, under § 206(*b*) process could be served upon the agent of the company "if such agent . . is authorized by law to be served with process in proceedings brought against such carrier." The question of the validity of the service is, thus, the same as if suit had been brought against the company on such a cause of action arising after federal control had terminated.

Solicitation of traffic by railroads, in States remote from their lines, is a recognized part of the business of interstate transportation. *McCall* v. *California*, 136 U. S. 104. As construed by the highest court of Minnesota, this statute compels every foreign interstate carrier to submit to suit there as a condition of maintaining a soliciting agent within the State. Jurisdiction is not limited to suits arising out of business transacted within Minnesota. Compare *Mitchell Furniture Co.* v. *Selden Breck Construction Co.*, 257 U. S. 213; *Missouri Pacific R. R. Co.* v. *Clarendon Boat Oar Co.*, 257 U. S. 533; *Chipman, Limited* v. *Thomas B. Jeffery Co.*, 251 U. S. 373. It is asserted, whatever the nature of the cause of action, wherever it may have arisen, and although the plaintiff is not, and never has been, a resident of the State. *Armstrong Co.* v. *New York Central R. R. Co.*, 129 Minn. 104; *Lagergren* v. *Pennsylvania R. R. Co.*, 130 Minn. 35; *Rishmiller* v. *Denver & Rio Grande R. R. Co.*, 134 Minn. 261; *Merchants Elevator Co.* v. *Chesapeake & Ohio Ry. Co.*, 147 Minn. 188; *Callaghan* v. *Union Pacific R. R. Co.*, 148 Minn. 482. This condition imposes upon interstate commerce a serious and unreasonable burden which renders the statute obnoxious to the commerce clause. Compare *Sioux Remedy Co.* v. *Cope*, 235 U. S. 197, 203.

That the claims against interstate carriers for personal injuries and for loss and damage of freight are numerous; that the amounts demanded are large; that in many cases carriers deem it imperative, or advisable, to leave the determination of their liability to the courts; that litigation in States and jurisdictions remote from that in which the cause of action arose entails absence of employees from their customary occupations; and that this impairs efficiency in operation, and causes, directly and indirectly, heavy expense to the carriers; these are matters of common knowledge. Facts, of which we, also, take judicial notice, indicate that the burden upon interstate

carriers imposed specifically by the statute here assailed is a heavy one; and that the resulting obstruction to commerce must be serious.[2] During federal control absences of employees incident to such litigation were found, by the Director General, to interfere so much with the physical operation of the railroads, that he issued General Order No. 18 (and 18A) which required suit to be brought in the county or district where the cause of action arose or where the plaintiff resided at the time it accrued. That order was held reasonable and valid in *Alabama & Vicksburg Ry. Co.* v. *Journey*, 257 U. S. 111. The facts recited in the order, to justify its issue, are of general application, in time of peace as well as of war.

The fact that the business carried on by a corporation is entirely interstate in character does not render the corporation immune from the ordinary process of the courts of a State. *International Harvester Co.* v. *Kentucky*, 234 U. S. 579. The requirements of orderly, effective administration of justice are paramount. In *Kane* v. *New Jersey*, 242 U. S. 160, 167, a statute was sustained which required non-resident owners of motor vehicles to appoint a state official as agent upon whom process might be served in suits arising from their use within the State, because the burden thereby imposed upon interstate commerce was held to be a reasonable requirement for the protection of the public. It may be that a statute like that here assailed would be valid although applied to suits in which the cause of action arose elsewhere, if the transaction out of which it arose had been entered

[2] A message, dated February 2, 1923, of the Governor of Minnesota to its Legislature, recites that a recent examination of the calendars of the district courts in 67 of the 87 counties of the State disclosed that in those counties there were then pending 1,028 personal injury cases in which non-resident plaintiffs seek damages aggregating nearly $26,000,000 from foreign railroad corporations which do not operate any line within Minnesota.

upon within the State,[3] or if the plaintiff was, when it arose, a resident of the State.[4] These questions are not before us; and we express no opinion upon them. But orderly, effective administration of justice clearly does not require that a foreign carrier shall submit to a suit in a State in which the cause of action did not arise, in which the transaction giving rise to it was not entered upon, in which the carrier neither owns nor operates a railroad, and in which the plaintiff does not reside. The public and the carriers are alike interested in maintaining adequate, uninterrupted transportation service at reasonable cost. This common interest is emphasized by Transportation Act, 1920, which authorizes rate increases necessary to ensure to carriers efficiently operated a fair return on property devoted to the public use. See *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563; *New England Divisions Case*, 261 U. S. 184. Avoidance of waste, in interstate transportation, as well as maintenance of service, has become a direct concern of the public. With these ends the Minnesota statute, as here applied, unduly interferes. By requiring from interstate carriers general submission to suit, it unreasonably obstructs, and unduly burdens, interstate commerce.

The case at bar resembles, in its facts, but is not identical with, *Missouri, Kansas & Texas Ry. Co.* v. *Reynolds*, 255 U. S. 565, and *St. Louis Southwestern Ry. Co.* v. *Alexander*, 227 U. S. 218. In the former, the validity of a similar Massachusetts statute was sustained in a *per*

[3] Compare *International Harvester Co.* v. *Kentucky*, 234 U. S. 579; "Jurisdiction over nonresidents doing business within a State", by Austin W. Scott, 32 Harv. Law Rev. 871, 887.

[4] Compare *Blake* v. *McClung*, 172 U. S. 239; *Chambers* v. *Baltimore & Ohio R. R. Co.*, 207 U. S. 142; *Maxwell* v. *Bugbee*, 250 U. S. 525, 537; *Canadian Northern Ry. Co.* v. *Eggen*, 252 U. S. 553; *Kenney* v. *Supreme Lodge*, 252 U. S. 411.

curiam opinion. In the latter, jurisdiction was upheld in the absence of a statute concerning solicitation. But in both cases the only constitutional objection asserted was violation of the due process clause. See *Reynolds* v. *Missouri, Kansas & Texas Ry. Co.*, 224 Mass. 379; 228 Mass. 584. Since we hold that the Minnesota statute as construed and applied violates the commerce clause, we have no occasion to consider whether it also violates the Fourteenth Amendment.[5]

Reversed.

MR. JUSTICE BUTLER took no part in the consideration or decision of this case.